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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 224.

J. C. TERRELL AND H. TERRELL, APPELLANTS,

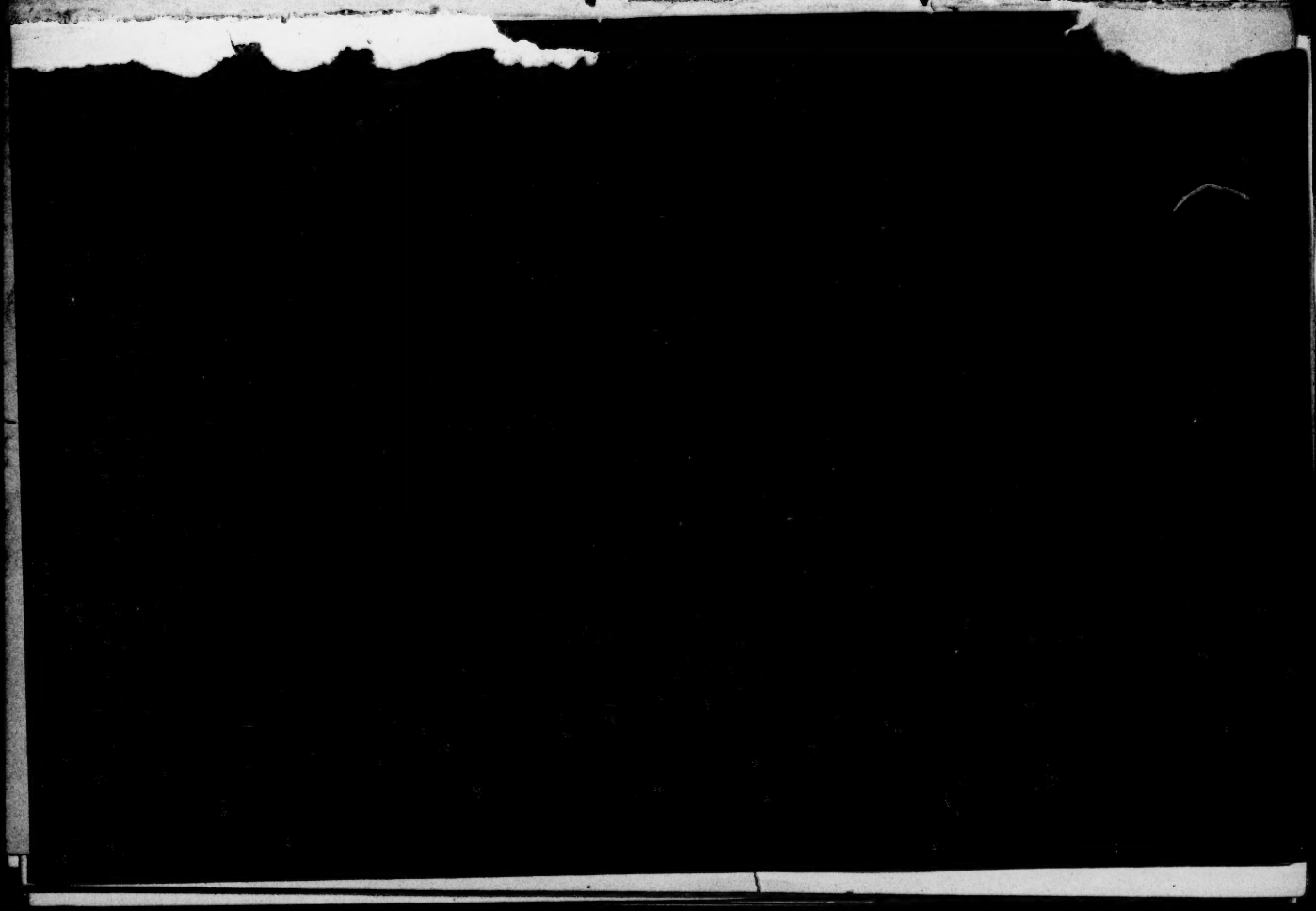
vs.

HUGH ALLISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 11, 1873.

Oct. 2, 1873



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1 Pleas had at a special term of the circuit of the United States for the fifth judicial circuit thereof, and for the southern district of Mississippi, begun and held at Jackson in said district, on the (4th) fourth Monday, being the 27th day of January, A. D. 1873, pursuant to an order duly made at the November term thereof, A. D. 1872—present the Hon. Robert A. Hill, district judge, the Hon. E. P. Jacobson, district attorney, M. Shaughnessey, marshal, and Geo. T. Swann, clerk.

HUGH ALLISON & Co., *vs.* VAUGHN A. HILBURN. } No. 51.

Be it remembered that heretofore, to wit, on the 13th day of April, A. D. 1868, came the said Hugh Allison & Co., the complainants herein, by Messrs. S. D. Ramsey, and C. E. Hooker, their solicitors, and filed in the office of the clerk of said circuit court of the United States for the southern district of Mississippi, at Jackson, their certain bill of complaint against the said Vaughn A. Hilburn, the defendant here-
2 in; which said bill of complaint with the process, proceedings, orders, and decrees of said court thereon are in the words and figures following, to wit:

Original bill of complaint.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

In chancery.

To the honorable R. A. Hill, judge of the southern district of the State of Mississippi, sitting in chancery for the southern district of said State:

Humbly complaining, showeth unto your honor, your orators Hugh Allison, Andrew Allison and W. C. Cook, who are citizens of the State of Louisiana, commission-merchants in the city of New Orleans, in the State of Louisiana, and partners doing business and negotiating under the firm name and style of Hugh Allison & Co., that on the 17th day of April, A. D. 1866, Vaughn A. Hilburn, a resident citizen of the southern district of Mississippi, of the county of Copiah, in the State of Mississippi, having acknowledged himself to stand indebted to your orators, by the name of Hugh Allison & Co., evidenced by his certain promissory note, bearing date the said 17th day of April, A. D.
3 1866, in the sum of twelve thousand dollars, bearing interest at the rate of eight per cent. per annum and due and payable on the first day of March, A. D. 1867.

And the said Vaughn A. Hilburn and his wife, Maria E. Hilburn, in the way of relinquishment of her dower, on the day of the date of said promissory note, executed unto your orators a mortgage, in due form of law, upon the following tract or parcel of land lying and being situate in the county of Hinds and State of Mississippi, and described as follows, to wit, the southwest fourth of section twenty-five; the east half of the southeast fourth and east half of west half of southeast fourth, of section twenty-six; the northeast fourth of section thirty-five; the northwest fourth and the west half of the northeast fourth, and twenty acres in the north end of the west half of the southwest fourth, of sec-

tion thirty-six, in township three, range four west, containing by estimation seven hundred acres more or less, to secure unto your orators payment of the aforesaid indebtedness.

4 And the said Vaughn A. Hilburn and his said wife having duly signed, sealed, and acknowledged the said mortgage-deed delivered the same to your orators, which said mortgage, that the terms and conditions may be more fully known unto your honor is herewith filed, with the several entries and endorsements thereon, marked Exhibit A, and prayed to be taken as a part of this bill.

Your orators further showeth unto your honor, that the promissory note described in said mortgage was duly executed by the said Hilburn on the day and date and in the manner and for the amount therein stated, but by neglect and inadvertence of the said defendants the said note was not delivered to your orators at the time of the execution and delivery of said mortgage.

That since that time your orators have often and repeatedly applied to the said defendant Hilburn and requested him to deliver said note, as he in good conscience was bound to do, but, with the intent to hinder delay and defraud your orators of their just and equitable rights, he hath wholly failed and refused so to do.

5 Your orators further show that a large amount of the indebtedness secured or intended to be secured by said mortgage still remains due and unpaid unto your orators, to wit, the sum of three thousand dollars; and that the same hath long since been due and payable, whereby the legal estate in the lands described in said mortgage has vested in your orators, redeemable nevertheless in equity upon payment of the principal and interest due your orators.

Your orators pray your honor to cause the said Vaughn A. Hilburn to be made a party defendant hereto, and that he be compelled to answer on oath all and singular the allegations and charges herein contained; that the defendant's equity of redemption in said lands may be foreclosed, and that an account be taken of the amount due your orators from the Exhibits A and B, now herewith filed, and prayed to be taken as part of this bill of complaint; that the premises may be sold under a decree of this court, and that the proceeds of said sale be applied to the payment and satisfaction of the amount found to be due your orators, and that your honor will grant such other and further relief as the nature of the case may require.

6 Your orators further prays your honor to cause a subpœna to issue to said defendant commanding him upon a day certain and under a certain penalty therein to be inserted, to be and appear before your honor, at the capitol, in the city of Jackson, in said State of Mississippi, then and there to answer in the premises and to abide the decrees and orders of this honorable court. And as in duty bound your orators will ever pray, &c.

S. D. RAMSEY.
C. E. HOOKER,
Solicitors.

Filed with Exh. A and B, 13 April, 1868, and sup'a issued to June rules, 1868.

GEO. T. SWANN, *Clk.*

I hereby acknowledge myself security for the costs which may accrue against the complainants in the within cause.

J. HURST.

Filed 13th April, 1868.
Teste: GEO. T. SWANN, *Clk.*

Exhibit A referred to in the foregoing bill of complaint is as follows, to wit:

7 This indenture, made the 17th day of April, A. D. 1866, by and between Vaughn A. Hilburn and his wife, Mariah E. Hillburn, of the county of Copiah, in the State of Mississippi, of the one part, and Hugh Allison & Co., of the city of New Orleans, in the State of Louisiana, of the second part, witnesseth: That whereas the said Vaughn A. Hilburn, in and by a certain promissory note under his hand, bearing even date herewith, stands indebted unto the said Hugh Allison & Co., in the sum of twelve thousand dollars, bearing interest at the rate of eight per cent. per annum from the maturity thereof, and due and payable on the first day of March, A. D. 1857: Now this indenture witnesseth that the said Vaughn A. Hillburn as well for and in consideration of the aforesaid debt of twelve thousand dollars, and the better securing the payment thereof with its interest unto the said Hugh Allison & Co., as of the further sum of one dollar to them in hand paid by the said Hugh Allison & Co. at and before the signing, sealing, and delivering hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents, do grant,

8 bargain, sell, and convey unto the said Hugh Allison & Co., all that tract of land lying and being situated in the county of Hinds, in said State of Mississippi, and described as follows, to wit: the the S.W.¼ of section twenty-five; the E. ½ of S.E. ¼ and E. ½ of W. ½ of S.E. ¼ of section twenty-six; the N.E. ¼ of section thirty-five; N.W. ¼ and W. ½ of N.E. ¼, and twenty acres in the north end of W. ½ of S.W. ¼ of section thirty-six, township three, range four west, containing, by estimation, seven hundred acres more or less. To have and to hold the said tract of land with the appurtenances thereunto belonging to the said Hugh Allison & Co., their heirs, executors, and administrators in fee-simple forever; provided always, that if the said Vaughn A. Hillburn, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said Hugh Allison & Co., their heirs, executors and administrators the aforesaid debt or sum of twelve thousand dollars on the day and time hereinbefore mentioned for payment thereof with all costs and charges without any fraud or further delay, and without

9 any deduction, defalcation, or abatement to be made of anything for or in respect of taxes or any other charge whatsoever, then and from thenceforth as well this present indenture and the estate hereby granted as the said recited promissory notes or obligation shall cease, determine, and become absolutely null and void to all intents and purposes, anything hereinbefore contained to the contrary in anywise notwithstanding.

In testimony whereof the parties of the first part have hereunto set their hands and seals the date hereinbefore written.

V. A. HILLBURN. [SEAL.]
M. E. HILBURN. [SEAL.]

THE STATE OF MISSISSIPPI,
County of Copiah:

Personally appeared before me, mayor of the town of Hazlehurst, Vaughn A. Hillburn who acknowledged that he signed, sealed and delivered the foregoing deed of mortgage on the day of the date thereof and for the purposes therein expressed. Also, personally appeared Mariah E. Hillburn, wife of the said Vaughn A. Hillburn who, being by me examined separately and apart from her said husband,

10 acknowledged that she signed, sealed and delivered the same as

her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband, on the day of the date thereof and for the purposes therein expressed.

Given under my hand and seal this the 17 day of April, A. D. 1866.

H. HANSLOW, [SEAL.]
Mayor and ex-off. J. P.

[Int. revenue stamps cancelled $12.]

Filed 21st April, 1866.

W. T. RATLIFF, *Clk.*

STATE OF MISSISSIPPI,
Hinds County:

I, W. T. Ratliff, clerk of the probate court, in and for said county, do hereby certify that the within deed of mortgage was filed in my office for record on the 21st day of April, 1866, and that the same, with the certificate of acknowledgement thereon, was this day duly recorded in Book of Deeds No. 29, pages 231 & 32.

Witness my hand and official seal, April 24th, A. D. 1866.

[L. S.] W. T. RATLIFF, *Clk.*

(Endorsed:) Exhibit "A." Filed Ap'l 13, 1868.

GEO. T. SWANN, *Clk.*

Exhibit "B" to said bill of complaint is as follows:

11 *V. A. Hilburn, esq., in account with Hugh Allison & Co. Interest to 27th May, 1867 a 8 %.*

DR.

1866.					
Sept. 6	To invoice sugar p. J. R. R.	37 61			
"	" Commission for advancing same, 2½ p. c	94	263	38 55	2 28
8	" Cash pd. your s. d. favor Hardee & Groom	300 00			
"	" Comm'n for advancing same, 2½	7 50	261	307 50	17 81
12	" Invoice sash & blinds pr. rail	74 67			
"	" Cash pd. y'r s. d. favor W. G. Bush & Co.	200 00			
"	" " " " " " D. W. McRae	50 00			
		324 97			
"	" Commission for advancing same, 2½	8 12	257	333 09	19 02
26	" Cash paid for check on N. Y'k favor Mrs. Hilburn	500 00			
"	" Comm'n for advancing same, 2½ p. c	12 50	243	512 50	27 65
27	" Invoice corn per rail	68 40			
"	" Comm'n for advancing same, 2½ p. c	1 71	242	70 11	3 76
28	" Cash p'd your s. d. favor W. G. Bush	200 00			
"	" Comm'n for advancing same, 2½ p. c	5 00	241	205 00	10 98
Oct. 5	" Cash p'd your s. d. favor H. Loeb	100 00			
"	" Comm'n for advancing same, 2½ p. c	2 50	234	102 50	5 30
11	" Invoice sundries per rail	65 31			
"	" " " for W. C. Terrell	104 48			
		169 79			
"	" Comm'n for advancing the same, 2½ p. c	4 24	228	174 03	8 82
13	" Cash p'd y'r s. d. favor Reed & Jones	50 00			
"	" Comm'n for advancing same	1 25	226	51 25	2 56
29	" Cash p'd your s. d. favor T. A. Burdette	200 00			
"	" Comm'n for advancing same, 2½ p. c	5 00	210	200 05	9 56
30	" Invoice lime pr. rail	46 46			
"	" Comm'n for advancing same, 2½ p. c	1 16	209	47 62	2 23
Nov. 3	" Cash p'd your s. d. favor W. M. Robertson	200 00			
"	" Commission for advancing same, 2½ p. c	5 00	205	205 00	9 34

Exhibit "B"—Continued.

DR.

Nov. 5	" Cash p'd your s. d. favor W. G. Bush	200 00			
"	" Comm'n for advancing same, 2½ p. c	5 00	203	205 00	9 25
12 6	" Cash p'd y'r s. d. favor E. G. Cook	445 96			
"	" " " " " " Dunning & Newman	71 00			
"	" " " " " " M. B. C. Hartwell	60 00			
"	" " " " " " W. G. Bush & Co	165 91			
		742 87			
"	" Comm'n for advancing same, 2½ p. c	18 57	202	761 44	34 16
"	" Invoice sundries p'r rail	376 38			
"	" Comm'n for advancing same, 2½ p. c	9 44	202	385 79	17 33
May 26	" Commission on crop of this season, say 22 bales *a* $4 p. bale			88 00	
	Amounts carried forward			3,692 58	180 06
1867.					
May 26	To amounts brought forward			3,692 39	180 06
"	" Balance of interest			111 83	
				3,804 21	180 05

CREDITS.

1866.					
Nov. 9	By net pro. 5 b. c		199	739 28	32 68
10	" Cash s. d. on Jas. N. Harding		198	45 28	1 92
22	" Net pro. 6 b. c		186	747 34	30 88
1867.					
Ap'l 30	" " " 11 "		27	447 76	2 69
	Balance of interest				111 83
	Balance in cash down			1,824 83	
				3,804 21	180 06
1867.					
May 26	To balance due us this date, bro't down			$1,824 83	
Ap'l 25	To ac. of M. Marx transferred to us			902 36	
				$2,727 19	

E. and O. E. New Orleans, May 27, 1867.

HUGH ALLISON & CO.
pr. E. G. PUNCH.

Endorsed: Exhibit B., filed Ap'l 13, '68, with O. bill. Geo. Swann, cl'k.

13 *Subpœna.*

U. S. OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon Vaughn A. Hilburn, a resident of the southern district of Mississippi, who is a citizen of the State of Mississippi, to be and appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court on the first Monday in June next, to answer a bill in equity exhibited against him by Hugh Allison, Andrew Allison, and W. C. Cook, commission merchants and partners under the firm name and style of Hugh Allison & Co., who are all citizens of the State of Louisiana, and unless he shall enter his appearance therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ and how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the
14 Supreme Court of the United States, and the seal of our said cir-

cuit court, this 13th day of April, A. D. 1868, and in the 92nd year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

U. S. MARSHAL'S OFFICE.

I hereby nominate and appoint W. M. Haley my special deputy, to execute and return the within process according to law.

Witness my hand and seal, this 13th day of April, 1868.

R. H. WINTER, [SEAL.]
U. S. Marshal Southern District of Mississippi.

Executed personally, and copy delivered April the 16th, 1868.

R. H. WINTER,
Marshal, Southern Dist. Miss.
By W. M. HALEY, *S. D. M.*

On the 6th day of July, 1868, the following answer of V. A. Hilburn, was filed in this cause, to wit:

15 *Answer of V. A. Hilburn.*

UNITED STATES OF AMERICA:

In the circuit court of the United States, southern district, July rules, 1868.

The answer of V. A. Hilburn, to the bill of complaint of Hugh Allison & Co., filed against him in said court.

This respondent reserving all exceptions to the insufficiency of said bill in matters of law, for answer thereto, says that he executed the deed of mortgage described in said bill at the time the same bears date, but denies positively that he so executed said mortgage in consideration of an indebtedness then existing from respondent to complainants for 12,000 dollars, or for any sum, and he denies that he owed the complainants any sum of money whatsoever, or that he executed to them any note acknowledging such indebtedness.

Respondent further answering, states that shortly prior to the date of said mortgage he had consented to enter into coparnership with a mercantile firm in Hazlehurst, Mississippi, under the style of D. K.
16 Coor & Co., and by the terms of the agreement he was to contribute 8,000 dollars to the capital-stock of the firm. He at first gave his note to said firm for $8,000, but afterwards it was determined by himself and partners that instead his note he would procure to contribute said sum by means of accepted drafts on some commission-house in New Orleans. Respondent after advancing a small sum of money to said firm in cash entered into arrangements with the complainants to accept his draft or drafts for $8,000 *dollars*, and to induce the complainants to accept such draft or drafts executed the mortgage described in the said bill. Respondent further states that the amount of indebtedness set forth in said mortgage as evidenced by a note of the same date is purely fictitious, and was designed merely to cover any liability on the promised acceptances; that he drew a draft on complainants for 8,000, and his note previously given to D. K. Coor & Co. was taken up, but before the draft was presented, respondent, having determined to withdraw from the said firm, advised the complainants not to accept said

drafts. Respondent did accordingly withdraw from the said
17 firm in June, 1866, and the complainants declined to accept said draft as advised; that at the time of such withdrawal he was not indebted to the said firm in any sum, and the mortgage stood without any consideration whatever, and in July, 1866, Hugh Allison one of the complainants, wrote to respondent that he could have the mortgage cancelled at any time, but from neglect and inadvertence, respondent failed to have a formal cancellation made as directed by law.

Respondent, further answering, states that he had other dealings with said complainants, in no wise connected with the specific object of the mortgage, and was not in arrears to complainants on account such dealings; that some time of the fall of 1865, the complainants engaged respondent to buy cotton for them, for which service respondent was to receive a certain part of the profits on sales of the cotton so purchased. To enable respondent to make said purchases complainants were to accept drafts for money or furnish merchandize as occasion might require.

Under this arrangement respondent purchased cotton on account
18 of complainants, but a decline in the occasioned a loss on the cotton so purchased and the complainants are attempting to shift the loss on to the shoulders of respondent by charging him for advances and crediting him with the proceeds of sales of cotton.

Respondent, further answering, denies that he owes the complainants any sum of money on any account whatsoever, or that the matters of account set up in Exhibit (B,) complainants bill, have any connection with the mortgage aforesaid. Respondent positively denies that the said mortgage was designed to secure any money alleged to be due to complainants and as set forth in the false account presented in Exhibit B, aforesaid; and respondent repeats, that there is no indebtedness by him to complainants which has any foundation, except in the attempt to hold him responsible for the losses on cotton in the manner aforesaid.

Respondent, further answering, states that the land embraced in said mortgage, although the title was made to respondent, was paid for by funds belonging to respondent's sister, Mrs. Kyle, and respondent's son, Thomas Hilburn, of which fact respondent apprised Hugh
19 Allison at the time the mortgage was executed, it being the intention of respondent, in case he obtained the 8,000 dollars to be invested in the firm of D. K. Coor & Co., to hold his interest in said firm, subject to the claim of his said son and sister for the sums used by him in the purchase of said lands.

Respondent, further answering, denies that the complainants have at any time called on him to deliver to them his note for $12,000, And, having fully answered, prays to be hence dismissed with his costs.

V. A. HILBURN,
Respondent.

THE STATE OF MISSISSIPPI,
County of Copiah:

Personally appeared before the undersigned, Samuel P. Harvey, U. S. commissioner, V. A. Hilburn, who upon oath, says that he has read the above answer or cross-bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge as stated and charged in said answer aforesaid.

Subscribed and sworn to before me, this 4th day of July, 1868.

SAMUEL P. HARVEY,
U. S. Commissioner.

Filed July 6th, 1868.

GEO. T. SWANN, *Clk.*

On the 13th day of May, 1871, the following was entered on the hearing-docket in this cause, to wit:

HUGH ALLISON & Co.,
vs.
VAUGHN A. HILBURN.

Set for final hearing.

20 And on the final hearing the following depositions were read as evidence in this cause, to wit:

Deposition of M. G. Punch.

COMMISSION.

The President of the United States of America to E. T. Fellowes, a commissioner for the State of Mississippi, in the city of New Orleans, State of Louisiana, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine M. G. Punch, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the southern district of Mississippi, sitting in equity, wherein Hugh Allison & Co. are complainants, and Vaughn A. Hilburn is defendant, on the part of the complainants, upon the interrogatories and cross-interrogatories annexed to this commission; and, therefore, you are hereby commanded that you, at a certain day and place to be appointed by you for that purpose, do cause the said M. G. Punch to come
21 before you, and then and there examine him on oath upon the said interrogatories and cross-interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said circuit court before the judges thereof, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States and the seal of said circuit court hereunto affixed, at Jackson, in said district, this 17th day of October, A. D. 1868, and in the 93rd year of the Independence of the United States.

[L. S.] GEORGE T. SWANN, *Clerk.*

(Copy.)

Interrogatories to be propounded to M. G. Punch, a resident of the city of New Orleans in the State of Louisiana and a witness on behalf of the complainants in a certain cause now pending and at issue in chancery in the circuit court of the United States of America, held in and for the southern district of the State of Mississippi, at the city of Jackson in said State, wherein Hugh Allison & Co., citizens of the State of
22 Louisiana and residents of the city of New Orleans in said State, are complainants, and Vaughn A. Hilburn, a citizen of the State of Mississippi and resident of said southern district, is defendant. Said witness to be produced, sworn, and examined by E. T. Fellowes, a duly authorized commissioner for the State of Mississippi within the State of Louisiana, residing in the city of New Orleans, in said State of Louisiana.

Int. 1st. Are you acquainted with the parties, complainants and defendants, to the above-entitled cause, or either or any of them?

Int. 2nd. If you state in answer to the 1st interrogatory that you are acquainted with the parties complainants, please state how long you have known them, where they resided during your acquaintance with them, what their occupation or business was, and where located?

Int. 3rd. If in answer to the last above interrogatory you state that you have known the complainants since the first of the year A. D. 1866, as commission merchants in the city of New Orleans, in the State of Louisiana, please state whether or not you were at any time since
23 the 1st January, 1866, in the employ of the complainants? If so, at what time, how long, and in what capacity?

Int. 4th. If in answer to the last-above interrogatory you state that you were in the employ of said complainants, from and after the first of the year A. D. 1866, as book-keeper or clerk, you will please examine the account-current in favor of complainants against defendant hereto attached, marked A, to these interrogatories, and state whether or not, the charges, and discharges, each and every of them, are truly stated in said account, giving particularly your knowledge and information in relation to the facts. Also, state whether or not the balance due appearing from said account is still due and owing complainants from said defendant?

Int. 5th. Do you or do you not know whether the said defendant was indebted to the said complainants, on any account whatever, prior to the 17th day of April, A. D. 1866? If yea, please state what amount, in what manner, and upon what account; and whether or not the same remains due and unpaid to complainants, and whether or not said
24 amount is embraced in said account current, hereto attached marked A, to these interrogatories?

Int. 6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Solicitor for Complainants.

In the circuit court of the United States, for the southern district of Mississippi.

Cross-interrogatories for the defendant, to be propounded to M. G. Punch, a witness for complainants, in the case of Hugh Allison & Co. vs. V. A. Hilburn, pending in said court.

X-int. 1. If you state in answer to the direct questions of complainants that you were "book-keeper" for them, state whether or not your information as to the items of the account mentioned is derived from actual personal knowledge that the particular articles mentioned in the account, or the moneys advanced, were supplied and fur-
25 nished, or from information derived from others, and from whom, and in what manner was this information communicated?

X-int. 2. State what your precise duties and functions were, and whether it was your duty to purchase or supply articles or to advance money or to procure money or articles for the customers of the house?

X-int. 3. If you have personal knowledge of the sale, delivery, and procurement of articles or money to or for the defendant, Hilburn, mention particular instance and item?

X-int. 4. Is not your information as to the account, derived altogether from others who stated to you that certain articles were furnished

and certain moneys advanced, or from memorandums furnished by them?

X-int. 5. Is not all your knowledge of the state of accounts between the parties, and as to the balance due, derived from an examination of the books, and from information derived from the complainants and others? If nay, state particularly what particular items of the accounts you have particular personal knowledge of?

26 X-int. 6. State whether you, on the 27th of May, 1867, attached your signature to the account spoken of, whether the item "April 25. To a/c of M. Marx tranferred to us," was then written? and if not, when and by whom, and whether you wrote the same?

X Int. 7th. Was or not the defendant at some time during the years 1866 and 1867 employed as agent to purchase cotton for the complainants, and did he not purchase and ship cotton to them, they agreeing to furnish the money and supplies necessary to purchase cotton?

W. P. HARRIS, *for Def't.*

Exhibit A referred to in the foregoing interrogatories is as follows, to wit:

26 *V. A. Hilburn, esq'r, in account with Hugh Allison & Co.—Interest to 27th May, 1867, a 8 %.*

DR.

1866.						
Sep. 6	To invoice sugar p'r J. R. R.	37 61				
"	" commission for advancing same, 2½ p. c.	94	263			
				38 55		2 28
8	" cash p'd your s. d. favor Hardee & Groome	300 00				
"	" com'n for advancing same, 2½ p. c.	7 50	261			
				307 50		17 81
12	" invoice sash blinds p'r rail	74 97				
"	" cash p'd y'r s. d. favor W. G. Bush & Co.	200 00				
"	" " " " " " D. M. McRae	50 00				
		324 97				
"	" comm'n for advancing same, 2½ p. c.	8 12	257			
				333 09		19 02
26	" cash p'd y'r ch'k on N. Y'k favor Mrs. Hilburn	500 00				
"	" com'n for advancing same, 2½ p. c.	12 50	243			
				512 50		27 65
27	" invoice corn per rail	68 40				
"	" com'n for advancing same, 2½ p. c.	1 71	242			
				70 11		3 76
28	" cash p'd y'r s. d. favor W. G. Bush	200 00				
"	" com'n for advancing same, 2½ p. c.	5 00	244			
				205 00		10 98
Oct. 5	" cash p'd y'r s. d. favor H. Loeb	100 00				
"	" com'n for advancing same, 2½ p. c.	2 50	234			
				102 50		5 30
11	" invoice sundries per rail	65 31				
"	" " " p'r W. C. Terrell	104 48				
		169 79				
"	" comm'n for advancing same, 2½	4 24	238			
				174 03		8 82
13	" cash p'd y'r s. d. favor Reed & Jones	50 00				
"	" comm'n for advancing	1 25	236			
				51 25		2 56
29	" cash p'd y'r s. d. favor T. A. Burdett	200 00				
"	" comm'n for advancing same, 2½ p. c.	5 00	210			
				205 00		
30	" invoice lime p'r rail	46 46				
"	" com'n for advancing same, 2½ p. c.	1 56	209			
				47 62		2 23
Nov. 3	" cash p'd y'r s. d. favor W. M. Robertson	200 00				
"	" comm'n for advancing same, 2½ p. c.	5 00	205			
				205 00		9 34
5	" cash p'd y'r s. d. favor W. G. Bush	200 00				
"	" com'n advancing same, 2½ p. c.	5 00	203			
				205 00		9 25
27 6	" cash p'd y'r s. d. favor E. G. Cook	145 96				
"	" " " " " " Dunning & Newman	71 00				
"	" " " " " " M. B. C. Hartwell	60 00				
"	" " " " " " W. G. Bush & Co.	165 91				
		742 87				
"	" com'n for advancing same, 2½ p. c.	18 57	202			
				761 44		54 16

Exhibit A—Continued.

DR.

"	" invoice sundries per rail 376 38			
"	" com'n for advancing same, 2½ p. c. 9 41	202		
1867.			385 79	17 33
May 26	" commission on crop of this season say 22 bales *a* $4 p. bale.....		88 00	
			3,692 38	180 06
May 26	" To amounts brought forward		3,692 38	180 06
" "	" balance of interest		111 83	
			3,804 21	180 06

CREDITS.

1866.				
Nov. 9	By nett pro. 5 b. c.....	199	739 28	32 68
10	" cash s. d. on Jas. N. Harding	198	45 "	1 98
22	" nett pro. 6 b. c.....	186	747 34	30 88
1867.				
Ap'l 30	" " " 11 "	27	447 76	2 69
	Balance of interest.....			111 83
	Balance in cash down.....		1,824 83	
			3,804 21	180 06
1867.				
May 26	To balance due us this date		$1,824 83	
Ap'l 25	To ac. of M. Marx transferred to us.....		902 36	
			$2,727 19	

E. and O. E., New Orleans, May 27th, 1867.

HUGH ALLISON & CO.,
per. M. G. PUNCH.

Copy of Exhibit B to bill, made exhibit A to interrogatories.

GEO. T. SWANN, *Clerk.*

28 Circuit court of the United States, for the southern district of Mississippi.

I, George T. Swann, clerk of said court, hereby certify that the annexed is a true copy of the interrogatories, Exhibit A to the same, and cross-interrogatories thereto, filed in a suit in said court, sitting in equity, wherein Hugh Allison & Co. are complainants, and Vaughn A. Hilburn is defendant, as the same remain on file in said cause in said court.

Given under my hand and the seal of said court hereto affixed, at Jackson, in said district, this 17th day of October, A. D. 1868.

[L. S.] GEO. T. SWANN, *Clerk.*

Circuit court of the United States, for the southern district of Mississippi.

HUGH ALLISON & CO. *vs.* VAUGHN A. HILBURN. } No. 51. Chancery.

Before me, the undersigned commissioner for the State of Mississippi, personally appeared M. G. Punch, a witness on behalf of complainants in above-entitled cause.

Testimony of M. G. Punch.

Ans. to inter. 1st. I am acquainted with the complainants; not the defendant.

29 Ans. to inter. 2nd. I have known the parties complainants over two years; they resided in New Orleans; they were cotton factors and commission merchants at 162 Common street.

Ans. to inter. 3rd. I was in the employ of the complainants from the

end of July, 1866, to the 30th September, 1868, as book-keeper and general office clerk.

Ans. to inter. 4th. The charges and credits in the account marked "A" are correct, with the exception of the item of interest up to 15th August, 1868, amounting to $178\frac{44}{100}$ dollars, which was omitted in said account, and the item of April 25th, 1867, of $902\frac{36}{100}$, "To a/c of M. Marx transferred to us," which appears charged in said account for the purpose of collecting same for account of M. Marx, of Hazlehurst, who was indebted to Hugh Allison & Co. for more than that amount. My knowledge of the facts above related I have derived from the books of the house of Hugh Allison & Co., except the item of Marx transferred, which I learned from Mr. Allison this morning. The balance due appearing from said account is not correct; it should be $2,003\frac{27}{100}$ dollars, including interest up to the 15th of
30 August, 1868, and excluding item of M. Marx transferred, which balance thus stated still remains due.

Ans. to inter. 5th. I know nothing of any of the facts contained in direct inter. 5th, except that the amount therein spoken of is not contained in the account hereto annexed marked "A."

Ans. to inter. 6th. The account marked "A" is not correct, because it bears date May 27th, 1867, and includes items in a subsequent account, dated August 15th, 1868. The account as rendered by me up to the 15th of August, 1868, showing a balance due at that date of $2,003\frac{20}{100}$, as shown by a statement hereto annexed & marked "B."

M. G. PUNCH.

Ans. to X-int. 1st. My information as to the items of the account is derived from the books of the concern.

Ans. to X-int. 2nd. My duties were that of book-keeper and general clerk in the house; it was not my duty to purchase or supply articles, or to advance money, or to procure money or articles for the customers of the house.

Ans. to X-int. 3rd. I can mention no particular instance of the
31 correctness of any special item derived from personal knowledge, but believe the items charged in said account to be correct.

Ans. to X-int. 4th. It is not.

Ans. to X-int. 5th. It is from the books, and from information derived from Mr. Allison, as mentioned in direct inter. 4th.

Ans. to X-inter. 6th. I did not, as it appears by account marked "A." I do not know who wrote the item of "M. Marx transferred to us," when it was written, or anything about it. The account marked A does not correspond with the account rendered by Hugh Allison & Co., of same date, by reason of the item of $902\frac{36}{100}$ being inserted since the rendition of that account.

Ans. to X-inter. 7th. I have no knowledge of any of the facts contained in X-inter. 7th.

M. G. PUNCH.

32 *Exhibit "B" to foregoing deposition.*

V. A. Hilburn in a/c with Hugh Allison & Co., in liq'n. Interest to 15th Aug't, '68, @ 8 %.

1867.

May 27.	To balance due us this date.....	1,736 83	
"	" comm'n on crop of cotton this season, '66–'67, 22 b. c. @ $4.....	88	
			1,824 83

1868.
Aug't 15. Int. to date, 1 y'r & 80 days, 8 %..... ..... 178 44

$2,003 27

E. and O. E. N. Orl's, 15 Aug't, 1868.

H. A. & CO., (*in liq'n.*)
Per M. G. PUNCH.

I, E. T. Fellowes, a commissioner of Mississippi for the State of Louisiana, residing in the city of New Orleans, appointed and commissioned by the governor of said State of Mississippi, and qualified according to law, do hereby certify that I caused M. G. Punch, witness for complainant named in the accompanying commission, in a suit now pending in the circuit court of the United States for the southern district of Mississippi, wherein Hugh Allison & Co. *is* complainants and Vaughn A. Hilburn is defendent, to appear before me, at my office in the city
33 aforesaid, on the twenty-first day of October, 1868, and said witness, who by me first duly sworn, testified to the interrogatories and cross-interrogatories accompanying said commission in the words as taken down by me in answer thereto, which deposition being carefully read over to said witness he approved the same as correct, and subscribed the same in my presence, all of which I enclose and direct to the clerk of the circuit court of the United States for the southern district of Mississippi, sitting at Jackson, in said State.

Given under my hand & seal at New Orleans, October 21st, 1868.

[L.] E. T. FELLOWES,
Commissoner Missi. for Louisiana.

Filed Oct. 22d, 1868.

GEO. T. SWANN, *Clk.*

Opened in court Nov. 12th, 1868.

G. T. SWANN, *Clk.*

Deposition of Moses Marx.

THE STATE OF MISSISSIPPI,
Copiah County:

Be it remembered, that by consent of the parties, complainants and and defendants, personally came before me, W. W. Miller, an
34 acting justice of the peace, in and for said county, Moses Marx, a witness on behalf of complainants, in a certain cause now pending and at issue (in chancery) in the circuit court of the United States of America, for the southern district of said State of Mississippi, wherein Hugh Allison & Co., are complainants, and Vaughn A. Hilburn is defendent.

The said MOSES MARX being first duly sworn deposed as follows, to-wit:

Int. 1st. Are you acquainted with the parties, complainants and defendant, to the above entitled cause?

Answer. I am.

Int. 2nd. What is the business or occupation of complainants; and where is their place of business?

Answer. They are commission merchants of the city of New Orleans, in the State of Louisiana.

Int. 3rd. Do you or not know of any business transaction between the

complainants and defendant V. A. Hilburn, at any time during the year 1866? And if yea, please state what it was.

35 Answer. I think some time in March, 1866, I introduced Mr. Hilburn, the defendant, to complainants; and that he, Hilburn, shipped complainants some cotton, and defendant informed witness that he received money from complainants.

Int. 4th. You will please look at Exhibit A, filed with interrogatories directed to you and others as witnesses in said cause, and state whether or not you know anything of the execution of a mortgage-deed by the defendant to complainants, of which said exhibit purports to be a true copy; and whether or not you know, of your own knowledge or from the defendant, the note specified in said deed was executed, or was to be executed, as expressed in said mortgage, and delivered to complainants together with said mortgage?

Answer. I was in New Orleans at the time the mortgage was received by complainants. Mr. Allison showed me the mortgage. I saw no note with the mortgage. One of the complainants, Hugh Allison, told me (witness) to tell Hilburn to give the note to me, (witness) or send it to complainants at New Orleans. Witness informed Hilburn of

36 the facts as stated, and Hilburn replied that he would send the note to complainants.

Int. 5th. Do you or not know, of your own knowledge or from the statements of the defendant, what was the purpose and intention of the defendant in executing said mortgage?

Answer. First and foremost, Mr. Owen came to the store of D. K. Coor & Co. Mr. Owen called Mr. Hilburn in the back room. They stayed in there about one half hour. They came out. Mr. Hilburn called witness in the warehouse; Mr. Hilburn said to witness that Mr. Owen may put him to some trouble, and says to me: "Don't you think that I had better make a mortgage to Hugh Allison & Co?" Witness told Hilburn that he ought to know his own business best. Hilburn said to witness: "If I do give them a mortgage on the Tallahala place, do you think they would furnish me with supplies?" Witness replied that he would guarantee that complainants would do whatever they promised. Witness further states that the defendant did receive supplies from complainants during the summer of 1866. Witness can't say how much.

Int. 6th. Did or not, the defendant at any time after the execu-

37 tion of said mortgage, by statement or otherwise, admit that he had received from complainants advances of plantation supplies, money, acceptances, and credits, or either or any of them under the security given by said mortgage?

Answer. I know Mr. Hilburn admitted to me that he got some supplies, and that he drew some drafts which were accepted and paid by complainants. Witness does not know whether they were received under the mortgage or not.

Int. 7th. Were you or not, at the time of the advances and acceptances to defendant by complainants, mentioned in your answer to last interrogatory, acquainted with the defendant, as to his circumstances and ability for obtaining credit without security?

Answer. As to his circumstances or ability to get credit without security I do not know.

Int. 8th. From your knowledge of the manner of the dealings of complainants, in the way of advances and acceptances, do you believe the defendant could have obtained the credits he did from complain-

38 ants without the complainants first being in some way secured other than simple promise?

(OBJECTION BY DEF'T.—Defendant's counsel objects to the foregoing interrogatory because the answer must be one of mere opinion.)

Answer. I do not believe that anybody could have obtained the credits without some security.

Int. 9th. You will now please give your reasons as fully as you can for your answer to the last above interrogatory.

Answer. I have none other to give than my knowledge of the manner in which complainants did business.

Int. 10th. Did you or not have dealings with complainants, and know of other persons who had dealings with them from and after the first of the year A. D. 1866, and whether or not, where credit was given by complainants, (in every instance of which you have knowledge,) mortgages, or other sufficient security, was required before the credits given?

Answer. I did have dealings, and know of other persons who had dealings with complainants, from and after the first of the year 1866, and I know of none except myself and two others who obtained
39 credit by giving security, and know of no one that did get credits with complainants without security or mortgage.

Int. 11th. You will please examine Exhibit B to the interrogatories directed to you and others by complainants, and filed in said cause 14th October, 1868, purporting to be a bill of particulars, stating an account between yourself and defendant, and state whether or not the items of charge, and each and every of them, are truly and properly stated, and the items of credit truly and correctly given, and whether or not the balance of $902.36, appearing in said account as unpaid, was ever paid to you prior to the 25th day of April, A. D. 1867.

Answer. I have examined the Exhibit B, and the items are correct as far as I know; had not been paid to me prior to the 25th of April, 1867.

Int. 12th. What disposition, if any, did you make of the balance of indebtedness appearing on said account in your favor; and, if disposed of, when, to whom, and for what consideration?

Answer. I transferred the said claim to complainants about the year A. D. 1867, and in consideration of a large indebtedness on my
40 part to complainants, for which they gave me credit to the extent of said account.

Defendant admits the writing of the letter of the date of Sept. 3rd, A. D. 1866, and marked Exhibit C to interrogatories filed by complainants, 14th Oct., 1868.

Witness cross-examined by defend't's counsel:

X-int. 1st. Were you present at the execution of the mortgage, or do you know from the defendants, the reason for executing the mortgage?

Answer. I was not present at the execution of the mortgage. The reason for executing the mortgage, as I understood from defendant, was to get advances of money and supplies.

X int. 2nd. State whether or not the defendant was a member of the firm of D. K. Coor & Co., and whether you were a member of that firm; and, if so, when did the copartnership commence, and, if dissolved, when and where did you do business?

Answer. The defendant was a member of said firm, provided he paid into said firm the sum of eight thousand dollars. I was a mem-
41 ber of said firm. The partnership commenced in January or February, A. D. 1866. The defendant did not pay the eight thousand dollars into the firm, and therefore was not considered a member. His connection with the firm ended about the first of June, A. D. 1866.

X-int. 3rd. Did Mr. Hilburn furnish any means at all towards the partnership during his continuance with it; and, if so, what amount, and about what time did he furnish it?

Answer. He did furnish means, but can't say exactly the amount, but somewhere between two and three thousand dollars, and the same was paid in, as well as I recollect, in February or March of that year; but the money was drawn out by him about as fast as it was put in.

X-int. 4. State whether or not the defendant, at any time prior to the time his connection ended with the partnership, drew a draft on complainants in your favor; and, if so, for what amount, and what was the date of the draft, and when payable, and when presented for payment?

Answer. The defendant did draw a draft in my favor on the 7th
42 of May, A. D. 1866, for the sum of eight thousand dollars, and payable at sight, and directed to the complainants, and presented on the day of the date of the draft.

X-int. 5. Did you present said draft to the complainants, and was it paid or accepted?

Answer. I did present said draft to the complainants, and it was not paid or accepted.

X-int. 5th. For what purpose was said draft drawn by defendant in your favor?

Answer. For the purpose of paying into the firm of D. K. Coor & Co his share of the funds, according to agreement.

X-int. 6th. Do you or not know whether the mortgage referred to by you was made for the purpose of enabling defendant to raise the necessary means to comply with the terms of entering the copartnership of D. K. Coor & Co.?

Answer. I do not know.

X-int. 7th. Did you ever hear complainants admit that the mortgage was executed for the purpose of raising means for defendants to enter the copartnership of D. K. Coor & Co.?

43 Answer. I have not.

X-int. 8th. You state, in answer to direct int. 11th, that the items contained in Exhibit B are correct, as far as you know. Now, state whether or not you sold the articles mentioned, and if so, did you enter the same in any book kept for that purpose?

Answer. I sold the largest portion of them myself. I did enter the same in a blotter, and from the blotter it was transferred to the ledger by my book-keeper.

Interrogatories in rebuttal, by complainant's counsel.

Int. 1st. You have stated in answer to cross-interrogatory 2nd, that the defendant was a member of the firm of D. K. Coor & Co. from January, or February, 1866, to June of the same year; provided he paid eight thousand dollars into said firm he was to become a partner with yourself and D. K. Coor; but defendant failing to pay said sum, was not considered a partner of said firm. You will now please state whether or not said defendant received any of the profits of sales during
44 the time he was with the firm, or made any claim to the same, and, whether or not he shared any of the losses sustained by said firm?

Answer. He did not receive or claim any of the profits, nor did he share any of the losses.

Int. 2nd. Did the defendant advise you of his means of raising the eight thousand dollars to be brought into said partnership at the beginning of the same; and if so, state what they were, and in what manner he expected to raise the same?

Answer. Defendant said that he had cotton sufficient to raise the money off of, and as soon as the cotton was sold he would pay the money in.

Int. 3rd. Was the defendant indebted to you on any other account during the year 1866, which *which* remains unpaid, than that transferred by you to complainants, 25th of April, 1867?

Answer. That was the only indebtedness I have any knowledge of.

Int. 4th. Was not the draft referred to in your answer to cross-interrogatories drawn by defendant in your favor, upon complainants, for eight thousand dollars, after its non-payment and non-acceptance,
45 regarded by you and the defendant as a nullity, and without consideration, and so treated.

Answer. It was so considered and treated.

Int. 4th. You will please explain how it was that account referred to in the foregoing interrogatories in your favor against defendant was made out in your favor and not in favor of the firm of D. K. Coor & Co.?

Answer. Some time in September, 1866, Mr. Coor's health got so bad that he asked me to let him draw out of the concern. He did retire, and transferred to me all the books and accounts, and all the accounts were made out in my own name.

M. MARX.

THE STATE OF MISSISSIPPI,
Copiah County:

I, W. W. Miller, an acting justice of the peace, do hereby certify that the answers to the foregoing interrogatories by the witness, Moses Marx, were duly taken before me, and after being carefully read to him, was by him signed and acknowledged to be his answers thereto.

Given under my hand and seal this 19th day of February, A. D. 1869.

W. W. MILLER, *J. P.* [SEAL.]

Filed by C. E. Hooker, esq., April 24, 1'69.

G. T. SWANN, *Clk.*

46 Exhibit A., referred to in the foregoing deposition, is as follows, to wit:

This indenture, made this 17th day of April, 1866, by and between Vaughn A. Hillburn and his wife, Mariah E. Hillburn, of the county of Copiah, in the State of Mississippi, of the one part, and Hugh Allison & Co., of the city of New Orleans, in the State of Louisiana, of the second part, witnesseth: That whereas the said Vaughn A. Hillburn, in and by a certain promissory note under his hand bearing even date herewith, stands indebted unto the said Hugh Allison & Co. in the sum of twelve thousand dollars, bearing interest at the rate of eight per cent. per annum from the maturity thereof, and due and payable on the first day of March, A. D. 1857: Now, this indenture witnesseth that the said Vaughn A. Hillburn, as well for and in consideration of the aforesaid debt of twelve thousand dollars, and the better securing the payment thereof with its interest unto the said Hugh Allison & Co.,
47 as of the further sum of one dollar to them in hand paid by the said Hugh Allison & Co., at and before the signing, sealing, and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents do grant,

bargain, sell, and convey unto the said Hugh Allison & Co. all that tract of land lying and being situated in the county of Hinds, in said State of Mississippi, and described as follows, to wit: The S. W. ¼ of section twenty-five; the E. ½ of S. E. ¼ and E. ½ of W. ½ of S. E. ¼ of section twenty-six; the N. E. ¼ of section thirty-five; the N. W. ¼ and W. ½ of N. E. ¼, and twenty acres in the north end of W. ½ of S. W. ¼ of section thirty-six, township three, range four west, containing by estimation seven hundred acres, more or less: To have, and to hold the said tract of land, with the appurtenances thereunto belonging to the said Hugh Allison & Co., their heirs, executors, and administrators, in fee simple forever; provided, always, that if the said Vaughn A. Hillburn, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid, unto the said Hugh Allison & Co., their heirs, executors, and administrators, the aforesaid debt or sum
48 of twelve thousand dollars on the day and time hereinbefore mentioned for payment thereof, with all costs and charges, without any fraud or further delay, and without any deduction, defalcation, or abatement, to be made of anything for or in respect of taxes, or any other charge whatsoever, then, and from thenceforth, as well the present indenture and the estate hereby granted, as the said recited promissory note or obligation shall cease, determine, and become absolutely null and void to all intents and purposes, anything hereinbefore contained contrary *in or given* notwithstanding.

In testimony whereof the parties of the first part have hereunto set their hands and seals the date hereinbefore written.

(Signed) V. A. HILBURN, [SEAL.]
" M. E. HILBURN. [SEAL.]

THE STATE OF MISSISSIPPI,
County of Copiah:

Personally appeared before me, mayor of the town of Hazlehurst, *the undersigned, an acting justice of the peace in and for said county,* Vaughn A. Hilburn, who acknowledged that he signed, sealed, and delivered the foregoing deed of mortgage on the day of the date thereof and for the purposes therein expressed. Also personally appeared
49 Mariah E. Hilburn, wife of the said Vaughn A. Hilburn, who, being by me examined separately and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed freely, without any fear, threats, or compulsion of her husband, on the day of the date thereof and for the purposes therein expressed.

Given under my hand and seal this the 17th day of April, A. D. 1866.

(Signed) H. HANSLOW, [SEAL.]
Mayor and Ex-Officio J. P.

Filed 14th October, 1868.

GEO. T. SWANN, *Clk.*

Exhibit B referred to in the said deposition of Moses Marx is as follows:

EXHIBIT B.

V. A. Hilburn to M. Marx, Dr.

1866.			1866.
Jan.	19.	To 1 padlock, 16*s*., cash	2 00
"	20.	" 1 bot. bitters, 12*s*	1 50
"	24.	" cash, 5.00	5 00
"	26.	" 1 set tin plates, 10*s*	1 25
"	"	" 1 pair shoes, 3.00	3 00
50	27.	" 1 bot. bitters, 12*s*	1 50
	"	" ½ doz. castile soap, 2*s*	1 50
Feb'y	2.	" 2 hand-saw files, @ 40c	80
"	"	" 1 peck potatoes, @ 4*s*	50
"	"	" 1 bbl. potatoes	8 00
Jan.	31.	" 10 y'ds flannel, @ 8*s*	10 00
"	15.	" 15 y'ds checks, @ 45c	6 75
"	"	" 10¾ y'ds alpaca, @ 6s	8 05
"	"	" bot. cologne	75
"	"	" 2 combs, @ 30	60
"	"	" 1 blank book	75
"	"	" 1 " "	38
"	"	" 2 spools thread, @ 10c	20
"	"	" ½ doz. buttons	30
"	"	" 2 linnen h'dk'fs, @ 35c	70
Feb'y	2.	" cash for beefe	5 00
"	9.	" 1 sack salt	5 25
"	"	" 1 keg nails	11 50
"	"	" 1 cross-cut file	60
"	13.	" 2 lbs. nails	23
"	"	" 1 p'r pants, per Alex	5 50
"	"	" 6 y'ds drilling, @ 45	2 70
"	"	" 1 pair shoes, per girl	3 00
"	"	" " " " " "	3 00
"	"	" 5 lbs. starch, @ 15	75
"	"	" 1 tin bucket	1 10
"	"	" cash of Myers and Levy	13 00
		Carried forward	208 16
51		Brought forward	$208 16
Feb'y	14.	To 1 pair shoes	3 00
"	"	" cash	90
"	"	" cash	1 50
"	"	" 1 keg nails	11 50
"	16.	" 26 lbs. " @ 1*s*	3 25
"	11.	" 1 pair shoes	2 50
"	17.	" 1 curry-comb	38
"	"	" 1 pair boots, per boy J	7 00
"	"	" 1 " shoes, " " "	3 00
"	"	" 1 comb, " " "	50
"	"	" 2¾ y'ds calico " " "	85
"	19.	" cash per H. Hanslow	50
"	"	" 1 bbl. flour	14 00
"	"	" 84 lbs. sugar, @ 2*s*	21 00
"	20.	" 25 lbs. coffee, 40c	10 00

	" " 4 " nails, 15		60
	22. " 1 razor, 2.25, per John Irish; 1 spade, 12*s*		3 75
	24. " 1 bot. brandy, 1.70		1 70
	26. " 1 overcoat, 18.00; 10 y'ds cambric, 2*s*		20 50
	" " 3 y'ds checks, @ 35; 1 bunch twine, 1.10		2 15
	" " 6 cards hooks & eyes, @ 15; buttons, 85c		1 75
	" " 2 bunches envelops, @ 2*s*.; 2 box' mustard, 40.		1 30
	" " 4½ y'ds checks, 66; 4 y'ds hickory, 66		5 61
	" " 1 stran beads, 30c.; 2 key rings, 2*s*		80
	" " Nutmeg grater, 40c.; cash, 5.00		5 40
	28. " 1 closet lock, @ 67; 1 paper brads, 83		1 50
52	" " 4½ y'ds checks, 50c		2 25
	" " 20 y'ds cambric, @ 22		0 44
	" " tobacco, per order		2 50
	" " cash for corn		8 32
	" " 1 necklace		25
Mar.	1. " 1 pair ladies' shoes, per Mrs. Wills		4 50
	" " 1 " " " " " " "		4 00
	Carried forward		355 36
	Brought forward		355 36
Mar.	1. To 5 quires paper, @ 40c		2 00
	" " postage and internal revenue stamps		2 00
	" " 2 bunches envelopes, 40c		80
	" " 1 bbl. potatoes		7 25
	" " cash $45.00		45 00
	" " 1 pair gauntlets		2 25
	" " 4 collars, @ 12*s*		6 00
	3. " 1 pair stirrup-leathers		90
	" " 1 foot-adze		4 50
	" " 1 lock & knob		1 50
	" " 1 gross screws		2 40
	" " 6 pair butts		1 50
	5. " 1 spirit-level, per Bullock		3 50
	7. " 1 pair shoes		2 20
	" " cash		4 00
	8. " 12 y'ds *shambry*, @ 35c		4 20
	" " 7 " " "		2 45
	" " 1½ " worsted		67½
53	" " cash paid on cotton		57 56
	" " 1 coat		11 00
	" " 4 y'ds tweed, 6*s*		3 00
	" " 1 French lock		1 50
	" " cash paid for butter		2 50
	9. " 1 quire paper		40
	" " m'd'ze, per Cook		12 50
	10. " 1 tin bucket		75
	" " 2 pair trace-chains for Haw		4 50
	" " 2 pair boots, per J. Coor		7 00
	" " 1 suit clothes & hat, per Cook		20 00
	" " 5 y'ds drilling		2 50
	12. " 2 bars soap, @ 4*s*		1 00
	" " 2 lbs. rope, @ 30c		60
	Carried forward		$573 29

		Brought forward	$573 29
March	10.	To 30 y'ds calico, per Cook, @ 2s	7 50
	15.	" 128¾ " " Tallahala place, @ 20c	25 75
	"	" 1 bot. bitters	1 00
	"	" 255 y'ds bagging	50 00
	"	" 1 bbl. flour	15 00
	"	" 1 bbl. potatoes	8 00
	"	" 2 hand-saw files, @ 30c	60
	"	" 4 H. and S. plows, @ 11.00	44 00
	"	" 57 y'ds calico, @ 20c	11 40
	"	" 122 lbs. rope, @ 2s	30 50
	"	" twine	1 00
54	16.	cash	5 00
	"	1 pair shoes	3 00
	"	1 pair pants	3 50
		1 plug tobacco	1 00
	17.	1 bbl. flour	12 50
		1 table-spread	3 50
		25 y'ds calico	5 00
	20.	cash paid for corn	10 72
	21.	1 pair trace-chains	1 75
	23.	10 y'ds muslin, per M. A	4 50
		m'd'se	16 50
		1 pair suspenders, per Mead	40
		1 ounce sugar of lead	15
		3 boxes lobsters, @ 4s	1 50
	24.	1 bbl. potatoes	5 50
		1 comb	63
		2 pair children's shoes, 14s	3 50
		2 stran beads, 2s	50
		Carried forward	$849 19
		Brought forward	$849 19
March	26.	To cash	15
	27.	" "	17 00
		" 6 y'ds cotton checks, per West, @ 4s	3 00
	30.	" cash paid on cotton	33 15
		" " " to J. Smith	10 00
Feb.	19.	m'd'se per U. Millsaps	33 70
	March 31.	To cash handed you	60 00
55	Apr. 2.	" 1 lb. soda	16
	" 4.	" cash	46 40
	5.	" 1 bell	60
		" cash T. W. Hamilton	112 00
	9.	" 10 lbs. rice, @ 25c	2 50
	"	" ½ bushel potatoes	1 50
	"	" 1 bbl. flour	13 50
	14.	50 y'ds furniture calico, @ 26	13 00
		2 pair shoes, @ 4.00	8 00
		1 net	50
		1 suit clothes	17 00
		m'd'se, per Mrs. Ellis	4 50
		cash	20 00
		1 bot. brandy	2 00
		365 lbs. yellow corn	9 75

		350 " " "	7 35
		8 lbs. tobacco, @ 10s	6 25
		1 bot. brandy	2 00
	16.	1 doz. pair socks per Wist, @ 60c	7 20
		6 y'ds toweling, @ 35c	2 10
		1 hickory shirt	1 50
		1 bot. brandy	1 65
		6 y'ds domestic, per Matilda, @ 30	1 80
	19.	cash	20 00
		Carried forward	$1,296 65
56		Brought forward	$1,296 65
Apr.	19.	To 36 y'ds bar*ase*, per Miss Elley, 65	23 40
"	"	" 1 comb	25
		" 2 brooms, @ 40	80
		m'd'se, per Isaac	39 05
		1 ½ bushel white corn, per U. Millsaps	2 51
		2¾ y'ds lin*n*en, 6*s*	2 07
		cash per Meade	5 00
		1 blacking-brush	25
		1 lb. soda	16
		arsenic	10
		1 pair pants	3 00
	24.	1 bbl. pork	28 50
"	"	1 bbl. flour	12 00
		" 8½ bushel yellow corn	12 75
	24.	" ½ pint alcohol	35
		" 1½ y'ds edging	60
	26.	" cash	11 50
		m'd'se	5 88
		10 lbs. sugar, @ 2*s*	2 50
	27.	cash	150 00
		180 lbs. bran	2 25
		cash *cash*	45 00
		2⅗ yellow corn	3 90
		2 1⅚ white "	4 10
		50 lbs. sugar, per G. Law, @ 23.4	11 50
	30.	10 lbs. nails, @ 10c	1 00
		1 bbl. flour, per Mrs. Henry	16 00
57	Mar. 2.	6 y'ds brown linen, @ 4*s*	3 00
		4 papers tacks, 15c	60
May	2.	1 bot. ink	35
		expenses on meat	3 00
		1 hand-saw	4 00
	4.	15 lbs. nails	1 50
		Carried forward	$1,693 52
		Brought forward	1,693 52
May	4.	To 1 gross buttons, 4*s*	50
"	"	" 1 spool thread	10
"	"	" 1 hank thread, per Silvia	25
"	"	" 1 pair shoes	4 00
"	"	" 1 " " per E. L	4 00

	5.	" 1 " pants		3 50
		1 " drawers		1 50
		1 shirt		1 50
	6.	20½ y'ds bl'ch'd domestic, per Crawford		8 20
		11 lbs. sugar		2 58
		6 " coffee, @ 35		2 10
		1 plug tobacco		1 00
		1 pair shoes, per Henry		3 50
		1 shirt		1 50
		1 knife		1 00
		3 pair hose, per Crawford		2 25
		1 lb. black pepper, per J. Coor		75
		cash		20 00
		"		5 00
58	7.	1 bbl. flour, per J. Coor		16 00
		" " "		12 75
		1 hat, for Vance		6 00
	7.	1 mallet, per G. Lowe		1 25
		91 lbs. yellow corn, per U. Millsaps		2 68
		4½ lbs. rope, per J. N. Crawford		80
		12 " nails, @ 10		1 20
	"	1 " rope		35
		1 hat, per G. D. Lowe		5 00
		8½ yellow corn		11 47
		6 y'ds linnen, 6s		4 50
		3 skeins flax		45
		1 bot. cologne		50
		2 ounces camphine		50
		Carried forward	$1,823	20
		Brought forward	$1,823	20
May	11.	To 1 ounce mercurial ointment		50
		1½ y'ds marseilles		1 87
		3 " linnen		3 00
		1 hat		3 50
		24 y'ds muslin, per Crawford		10 80
		1 hoop skirt		2 50
		1 belt		1 25
		1 band comb		1 00
		2 spools thread		20
	14.	butts & screws		2 50
	14.	20 y'ds domestic, per G. Lowe		8 00
59		20 " calico		4 00
		2 spool thread		20
		3 y'ds linnen		1 65
		coat & pants, per Crawford		16 50
		4 y'ds embroidery, @ 75 cts		3 00
		1 fan		75
		cash		51 00
	15.	8 pair window fastenings		80
		1 hoe		1 05
		1 hatchet		2 25
		1 coat		3 00
		6 doz. screws		1 20
		3 lbs. nails		30

	17.	7 " "		70
		1 bridle		2 25
		9 y'ds cottonade, 6s		6 75
	18.	1 bot. brandy		2 00
		4 y'ds gingham, @ 40c		1 60
		2 " edging, @ 40c		80
		1 y'ds cottonade		50
		1 coat		3 50
		Carried forward		$1,963 22
		Brought forward		1,963 22
May	17. To	1 pair shoes, per G. N. Crawford		2 25
	" "	1 box hair-pins		50
	25. "	4½ y'ds calico, per J. Crawford		90
		3 " linnen, @ 60		1 80
		5 lbs. candles, 2s		1 25
		1 box seidlitz powders		50
		1 doz. skeins silk		75
		1 preserve kittle		2 00
		1 pair shoes, per N. Millsaps		6 00
		1 pair socks		50
	28.	cash		15 00
	"	6½ bushels of corn, @ 1.35		8 75
	"	1 ounce camphor		15
		1 lb. pep'er		50
		1 wash-board, per Millsaps		1 00
		1 bot. brandy		2 00
		2½ y'ds calico, per J. N. Crawford		50
		1 bell-cord		25
		1 pocket-knife		60
		1 bbl. flour		16 00
	30.	1 " "		14 00
		37½ y'ds ticking, 2s		9 43
		12½ lbs. ham, 26½		3 25
		2 pair blankets, @ 8.00		16 00
		1 knife		85
		1½ lbs. powder		50
		2 lbs. shot		40
		107 lbs. corn, 12s		3 00
		112 " "		5 90
June	1.	1 ounce mercurial ointment		50
		mdse, per G. D. Lowe		11 00
		Carried forward		2,089 43
61		Brought forward		2,089 43
June	1. To	1 bot. port wine		1 00
	"	1 keg		1 75
		1 ounce Peruvian bark		15
		6 lbs. coffee, per Crawford, 35c		2 00
		1 pair drawers		1 50
		1 ounce turpentine mixture		25
		1 shirt		2 00
		1 pair socks		50
		10 y'ds calico, per G. D. Lowe's order		2 00

		2 " muslin	1 00
		1 bot. paregoric	40
		1 bot. laudanum	15
		1 pair shoes, per John Coor	3 00
		1 " "	4 00
		2 neckties, 6s	1 50
		6 y'ds domestic, @ 4s	3 00
		3 spools thread	20
		1 paper needles	10
		½ lbs. ginger	25
	4.	1 lb. soda	15
		2 boxes mustard, 15c	30
	5.	10 lbs. nails	1 00
		242 " corn, @ 1.35 per bu	5 85
		246 " " per Millsaps	10 85
		266 " white corn, @ 1.85 per bu	7 53
		1 bbl. pork	45 00
62		13½ lbs. hams, @ 2s	3 77
	6.	cash	5 00
	7.	5 y'ds alapaca	6 25
	"	7 " bl'ch' domestic	2 10
		2 papers tacks	20
	8.	5 lbs. coffee, per G. D. Lowe, 35	1 75
	"	1 pair smo'thing-irons	3 20
		Carried forward	2,207 18
		Brought forward	$2,207 18
June	8.	To 4 bushels corn	5 40
		drugs	25
	9.	1 hat, per Coor	7 00
		1 bot. brandy	2 00
		1 fine comb	50
		1 plug tobacco, per Crawford	1 00
	11.	1 pair pants, p'r G. D. Lowe	3 50
		2 shirts	3 50
		3 y'ds linnen	2 25
		13 lbs. hams, @ 2s	3 25
		11 y'ds muslin, @ 40c	4 40
		2 " ribbon	25
		3 fans	50
		1 bbl. flour	12 75
		5 lbs. candles, @ 30	1 50
		1 bridle	1 25
		1 bot. bitters	1 00
		1 pocket-book	50
63		5½ lbs. sugar, per N. Millsaps	1 38
		cash	2 00
	14.	1 pair shoes, per T. W. Hamilton	6 00
		" " " "	3 50
		" " " "	3 00
		4 plugs tobacco " "	4 00
		1 bot. number six " "	1 50
	14.	2 lbs. copperas, per Hamilton	20
		2 " sulphur, @ 40c	80
		1 " starch	20

		4 boxes matches	40
		2 plow-points, @ 4s	1 00
		cash to Dan King	2 00
		cash	10 00
		"	11 00
		Carried forward	$2,304 96
		Brought forward	$2,304 96
June	16.	To 1 band comb	1 00
		1 lb. soda	25
		mdse, per Alex	10 00
		per Henry	10 75
		2½ bushels corn	3 37
	18.	1 pair pants, per Lowe	3 50
		4½ bushels corn	6 07
		1 bot. brandy	2 00
		2 chisels, per Lowe	3 50
		1 h'd'chief	50
64	19.	5 lbs. sugar, Crawford	1 25
		1 pair shoes, Lowe	2 50
		1 plug tobacco for Millsaps	1 00
		cash for same	5 00
		1 gal. linseed oil	2 50
		1 vail for Crawford	1 75
		1 y'ds ribbon	25
		1 bot. ointment	35
	25.	cash	200 00
	23.	302 lbs. corn	10 50
		3 pair hinges	3 75
		1 " "	75
		6½ doz. screws	1 63
		1 bot. bitters	1 25
		cash	55
		18 lbs. sugars	3 96
		mdse, per Darien	5 00
		1 bbl. flour	14 00
		1 plug tobacco, per Crawford	75
	25.	2,007 lbs. corn	76 30
		2 lbs. nails	25
		10 y'ds muslin for Lowe	4 00
		Carried forward	$2,672 84
		Brought forward	$2,672 84
June	25.	To 2 bells	2 50
	28.	cash to Fairchild	30 00
		1 comb	50
65		13½ y'ds domestic, per West, @ 4s	6 75
		3 " marseilles, 10s	3 75
		5 doz. buttons, 20c	1 00
		1 bot. brandy	2 00
		2 spools thread	25
		1 paper magnesia	50
		cash for Mrs. Cook	130 00
		mdse for same	56 72

	27.	6 y'ds domestic for Crawford	1 50
		cash	4 00
		"	2 60
		" paid Dan	1 25
	29.	"	5 00
July	2.	"	50 00
June	28.	4½ bushels corn	6 52
		1 net for Julia	50
	29.	cash	5 00
		2 y'ds ribbon for Anthony	50
		1 set table spoons	1 50
		2 bot. brandy	4 00
		cash to Porter	28 50
July	2.	mdse, per Lowe	13 05
	3.	" " Crawford	2 20
	"	10 y'ds domestic, per Mrs. Deason	4 00
	4.	cash to D. K. Coor	25 00
		1 bushel corn	1 50
		½ lb. soda	13
66		1 knife for nephew	1 25
		1 bot. turpentine	50
		cash paid hauling corn	1 00
		Carried forward	3,065 26
		Amount bro't forward	3,065 26
July	5.	To 4½ bushels corn	6 16
"	19.	" 19 lbs. hams	5 70
"	6.	" cash	6 00
		25 lbs. hams for G. D. Lowe, @ 2.5	12 25
		" 1 bbl. flour	16 00
		1 box hair pins	25
	7.	1 pair shoes, per J. Coor	3 50
		1 " " " "	4 50
		1 " " " "	4 00
	9.	284 lbs. corn	7 50
	10.	1 boy-hat	1 50
	11.	½ yd. *shambrey*, @ 2*s*	25
	12.	1 keg nails	11 00
		1 sack salt	3 00
June	21.	cash	45 00
July	14.	amount paid Dan	5 25
		4½ bushels corn, 12*s*	6 75
		1 bot. brandy	2 50
		1 " bitters	1 25
	16.	cash paid G. S. Ashley	20 00
		8 yds. ginghams for Jeff	6 00
		2 bushels corn, 12*s*	3 00
67		17 lbs. nails, 1*s*	2 13
		1 ounce gum arabic	10
		1 buggy-whip	1 50
		3 yds. linen, @ 6*s*	2 25
		2¼ bushels corn, 12*s*	3 37
		12 bunches braid, @ 10c	1 20
		6 lbs. candles, @ 35	2 10
		1 ball twine	25

		1 order on L. B. Harris	40 00
		cash paid A. Roose	25 00
		Carried forward	3,327 12
		Bro't forward	3,327 12
July	18.	To 2 straw hats per J. Coor	50
		1 gallon linseed-oil	2 50
		1 quart turpentine	75
	19.	13 lbs. nails, 1*s*	1 63
		2 papers tacks, per J. N. Crawford	50
	20.	1 pair shoes, per Mrs. Deason	4 50
		1 corset " "	3 00
		6½ bushels corn	9 75
		2⅓ yds. linnen, per J. Coor	3 75
		1 bbl*s*. flour	16 00
		4¾ bushels corn	7 13
	21.	cash paid Wess Watch	8 00
		cash " Dan	8 40
		1 pocket-book	75
		1 bot. wine	2 00
68		3 lbs. soda, per order, 2*s*	75
		1 doz. shoe-strings	25
	23.	2 papers turnip-seed	20
		cash	5 00
		1 h'd'k'f, per Coor	1 25
		1 set*s* cups & saucers	75
		4⅝ bushels oats, @ 8*s*	4 65
		5 lbs. starch, @ 20c	1 00
July	23. 2	" soap; 10 lbs. sugar	2 80
		1 pair shoes	2 50
		1 " hose	50
		1 comb & pins	45
	26.	1 water-bucket, per J. Coor	2 25
		1½ yd*s*. bar*ast*, 6*s*	1 13
	27.	cash	100 00
		" paid Birdsong & Carpenter	82 31
		10 lbs. nails, 1*s*	1 25
		2 pair' hinges & screws	3 00
July	27. To	126 lbs. corn, @ 12*s*. per b	3 38
		1 plug tobacco, 6*s*	75
	28.	11¼ lbs. sugar, per J. N. Carpenter	2 25
		½ ream paper	2 00
		¼ mutton	75
	30.	1 paper tacks	25
	31.	1 plug tobacco	75
		cash	10 00
69		1 spool thread, per Anthony	10
	Aug. 2.	cash, per Bullock	1 50
		3. 1 bot. plantation bitters	1 50
	4.	133 lbs. corn	3 93
		1 bbl. flour, per order	15 00
		1½ yds. marseilles, per West	2 63
		1 pair shoes & socks	5 50
		1 shirt, 2.00; 1 h'd'ch'f, 6*s*	2 75
		1 comb, 4*s*.; 1 bucket, 80	1 30

		m'd'se, per Jeff. Minner	6 00
		" " Luttrick	8 00
		1 hat, per J. N. Crawford	8 00
	6.	cash, per order	12 50
		" " "	42 00
	8.	"	5 00
	9.	26 yds. bar*ash*, per Miss Elly	16 90
		22 " " " " " "	14 30
		1 bbl. flour	15 00
		cash paid Lutrick	6 00
		1 doz. blacking	1 00
		2 bunches braid	10
	8.	cash paid Bonwell	8 00
	11.	" " Bess	10 50
		120 lbs. corn, 1.65 per b	3 54
Aug.	11.	To 1 pair shoes, per son	3 00
		m'd'se, per Mrs. Crawford	26 50
		1 pair pants, per Isaac	3 50
		m'd'se	76 40
70		1 box lilly-white, per West	50
		cash	65 25
		400 brick'	6 00
	14.	cash, per Wilson	10 00
		3 doz. screws, 2*s*	75
		205 lbs. rye	10 00
	15.	m'd'se, per Mrs. Crawford	2 50
	16.	8 shovels & spades	20 00
	17.	2 chisels	5 50
		2 augers	4 00
		10 lbs. spikes, 1*s*	1 25
		1 spool thread	10
	18.	cash	6 00
		2 blank books	30
		cash, per order	6 00
		m d'se, J. N. Crawford	45
		" J. Chance	25 20
		3 yds. linnen, A. Matten	3 00
		1 shirt, per Clayton Woods	2 50
		1 bot. brandy	2 50
		" " "	2 50
		1 plug tobacco	75
	21.	1 lb. pepper	75
		2 pair' trace-chains	3 50
		cash paid, hauling cotton	75
		cash paid Kent	5 50
71		1 plug tobacco, per order	75
Aug.	22.	To 19 lbs. nails & well-rope	5 18
		mdse, Mrs. Crawford	4 50
		nails, hinges, & screws	88
	23.	1 carpenters' pencil	25
	24.	mdse, per Mrs. Crawford	11 25
	25.	1 pair shoes, per C. Woods	3 50
		" " " " J. Robinson	3 00
		2 pair' socks, 4*s*	1 00
		1 hat, per J. Robinson	2 00
		1 skirt, per A. Martin	2 50

		1 pair shoes	3 00
		1 " " & socks, per Martin	3 50
	27.	½ doz. spool-thread, per J. Coor	60
		115 lbs. nails, 11c	12 65
		4 " candles, @ 35c	1 40
		1½ yds. bar*ash*, 6*s*	1 13
		1 sack fine salt & 1 sifter	4 75
	29.	1 plug tobacco	75
		1 yd*s*. lin*nen* & spool-thread	1 10
	30.	1 bot. bitters	1 50
		1 bbl. flour, per Albert	15 00
		cash	50
		mdse., per J. Coor	75
	31.	1 bbl. flour	15 00
Sept.	1.	1 paper pins, per J. Crawford	10
		1 knife, per Elbert	75
		1 bot. brandy	2 50
72		1 hat & pants per order	7 00
		1 pair shoes " "	3 00
		1 plug tobacco	75
		2 " per Charles	1 20
	3.	4 bars soap, 4*s*	2 00
		1 hat, per J. Coor, son	3 50
Sept.	4. To	1 bot. brandy per J. Crawford	2 50
		1½ y'ds ruffling	60
	5.	14 lbs. hams, per G. D. Lowe, 35	4 90
		4½ bush. corn	6 50
	6.	1 bot. brandy, per J. Coor	2 55
	7.	14 lbs. hams, 35	4 90
		slate-pencils	10
		1 bot. plantation bitters	1 50
		10 lbs. nails, 1*s*	1 25
		cash to Stanly	9 50
	8.	10 lbs. nails	1 25
		m'd'se, p'r J. Crawford	3 40
		" " H. Wade	37 00
		cash	75
		m'd'se, per J. Coor	17 00
		1 bot. brandy	2 50
	12.	1 pair shoes	2 00
		1 " " per Anthony	5 00
	13.	butts & screws	1 25
		m'd'se, per Pell	4 88
		" " Mrs. Crawford	1 00
73	14.	8 lbs. ham, per J. D. Lowe	2 80
		cash paid, " "	6 35
	15.	1 shirt & socks for Jesse	4 00
		1 shirt for Banks	2 00
		1 " & dress, per Clayton	5 00
		1 bbl. pork, per J. C. Wade	40 00
	17.	8 ounces medicines, 2*s*	2 00
	20.	1 draw-knife	2 50
	22.	m'd'se, per G. D. Lowe	11 65
		tobacco, per son	50
	26.	1 bot. brandy	2 50
Sept.	26. To	1 piece tobacco	50

	27.	1 pair shoes, per Mrs. Crawford	5 50
		2 pieces braid	20
	28.	m'd'se, per H. Wade	3 25
	29.	1 hat, " West	5 00
		ammonia, per West	1 00
Oct.	3.	cash to Pell	2 00
	5.	1 bbl. flour	16 50
		cash paid to Faler, flour	16 00
	6.	1 bot. brandy	2 50
	13.	1 coffee-pot	75
	15.	20 y'ds calico, per Mrs. Crawford	4 00
		2 spools thread	20
	16.	1 pair pants, per C. Woods	3 50
	17.	1 plug tobacco	1 00
	18.	m'd'se, per Crawford	1 80
74		1 bot. bitters	1 50
		2 lbs. nails	25
	20.	1 hat, for Martin, negroe	4 50
		10 y'ds calico, per J. Crawford	1 50
		braid	20
		1 pair boots, per Anthony	10 00
	23.	3 lbs. coffee, @ 35	1 05
		4 " sugar	1 00
	24.	20 " nails	2 50
	29.	1½ y'ds alpacca	1 50
		2½ y'ds cambric	63
		1 bot. brandy	5 00
		15 lbs. nails	1 88
		1 plug tobacco, per Wood	1 00
Nov.	1.	2 lbs. candles, 40c	88
		10 lbs. nails	1 25
Nov.	3. To	34 lbs. nails	4 25
		4½ y'ds jackonet, @ 90	4 05
		" " " " 10s	5 63
		4 y'ds linsey, @ 6s	3 00
		2 hats	9 00
	5.	4 y'ds flannel	5 00
		2 " linnen	2 50
		butts & screws	2 23
		m'd'se, per Mrs. Crawford	2 85
	9.	1 pair shoes, " "	2 25
	12	1 " gloves, per son	75
75	16.	1 bot. coal-oil	75
		1 " vermifuge	38
		2 spools thread	20
	20.	1 hair-brush, per Mrs. Crawford	1 25
	21.	1 bot. bitters	2 00
	27.	m'd'se, per George, negroe	3 00
	30.	1 bot. bitters	2 00
Dec.	4.	2½ y'ds alapacca, 10s	3 13
		½ doz. buttons	25
	12.	27 lbs. bacon, @ 2s	9 25
	15.	7 sets & catches, @ 40c	2 80
		5 doz. screws for Stanley	50
	15.	17 lbs. bacon, 2s	4 25
	18.	1 bot. bitters	1 50

	19.	2 plugs tobacco	2 00
		1 sifter	1 00
Aug.	1.	cash	240 00
			4,835 76
		To balance due this day	902 36

I transfer the above ac. to Mess. Hugh Allison & Co.
New Orleans, April 25 1867.

M. MARX,
P'r S. P. L.

76 1866.

Jan.	27.	By cash	5 00
Feb'y	2.	" "	10 00
	9.	" "	5 00
Mar.	2.	" invoice, Hugh Allison & Co	61 84
	14.	" Mrs. Wells, draft	319 98
	26.	" cash for mule	65 00
Apr.	16.	" 22 y'ds calico returned	5 72
		" 1 bbl. flour, by G. D. Lowe	16 00
June	15.	" cash	2,533 00
"	25.	" draft on Hugh Allison & Co	500 00
"	28.	" cash	91 25
July	6.	" "	60 00
Aug.	20.	" "	60 00
Sept.	7.	" "	9 50
"	22.	" J. Coor's account	92 23
"	24.	" cash	5 88
	"	" hat returned	3 00
			$3,933 40
		Bal. due	902 36
			4,835 76

Filed 14th October, 1868.

GEO. T. SWANN, *Clerk.*

77 Exhibit C, referred to in said deposition of Moses Marx, is as follows, to wit:

HOMELAND, NEAR HAZLEHURST, MISS.,
Sept. 3rd, '66.

Messrs. H. ALLISON & Co.,
New Orleans:

GENTLEMEN: I write you in order to call your attention to the mortgage in your favor upon the plantation in Hinds County, Miss'i, known as the Tallahala place. You will please remember that that mortgage was given in order to secure you in all the advances which you might make to me; and also in order that the means of Mrs. Hilburn might not become involved with mine, so as to subject her separate property. She told me that she spoke to you while she was in New Orleans last winter about her interest, and that you would attend to it. Please charge my account with all the advance you have made me, and credit her with all the amounts of proceeds of shipments made to you, as all

the cotton shipped to you was on her account. That your account should thus stand is important to her interests, and also will be
78 advantageous to you. If the amount you have advanced me—and please send me an account of it, including advances on account of the Tallahala plantation—altogether amounts to near six thousand ($6,000) dollars, please write to me, as it may become desirable to foreclose the mortgage in order to protect the fiduciary interests that I represent, as well as to secure yourself. You will recollect the trouble I got into with in reference to cotton, by which I lost heavily on account of the cotton being delayed. Well, now, Owen has commenced suit against me for large damages he says he has sustained. I feel confident that I shall non-suit him at law, but still, I thought it best to advise you of the fact. He may have you interrogated to know how we stand. In that case I want your acc't against me to run up as near the value of the place which *you* have mortgaged to you as possible.

Please send my account in full to date for all that you have let me have; also please include one thousand dollars' worth of supplys,
79 and five hundred dollars in cash. I will be down as soon as I feel secure in going to the city.

Yours with much respect,

V. A. HILBURN.

Filed 14th Oct., 1868.

G. T. SWANN, *Clk.*

And on the 16th day of May, 1871, a day of regular May term, 1871, of said circuit court of the United States for the southern district of Mississippi, the following order was made in this cause and entered upon the minutes of said court, to-wit:

HUGH ALLISON & CO., COMPL'T, VAUGHN A. HILBURN, DEF'T. } No. 51.

This cause coming on for hearing on bill, answer, exhibits and proofs, and the same having been submitted to his honor the judge, it is ordered, adjudged, and decreed, and his honor, the judge, doth order, adjudge, and decree, that the papers herein be referred to Archie McGehee, as a commissioner of this court to compute the amount due complainants, and report the same to this court.

80 Ordered, adjudged, and decreed, this the 16th day of May, A. D. 1871.

And on the 17th of May, 1871, the following report of A. McGehee, commissioner, &c., was filed in this cause, to-wit:

Circuit court of the United States, southern district of Mississippi.
May term, 1871.

IN THE MATTER OF HUGH ALLISON & CO. *vs.* VAUGHN A. HILBURN. } N. S. 51. In equity.

The undersigned, appointed a commissioner to ascertain and report the amount due to complainants in the above-styled cause, would represent, as follows:

That as appears from exhibit marked B. and filed herein April 13th, 1868, there was due May 26th, 1867, as follows:

Balance due on a/c by V. A. Hilburn to H. Allison & Co....	$1,824 83
And on April 25, 1867, M. Marx transferred to said Hugh Allison & Co. the a/c of V. A. Hilburn for.....	$900 36

Commissioner submits the following alternative report:

81 On a/c proper V. A. Hilburn with Hugh Allison & Co., there is due at this date, as follows:

Principal.....	$1,824 83
Int. 3 years, 11 mo's, 10 days @ 8%.....	575 70
Due on a/c V. A. Hilburn with H. Allison & Co.....	$2,400 53

On a/c to M. Marx, transferred April 25, 1867, there is due, as follows:

Principal.....	$902 36
Int. 4 years and 11 days.....	290 72
Due on transferred a/c M. Marx—total.....	$1,193 08
If this latter claim is allowed, there is due.....	$3,593 61
If rejected, there is due.....	$2,400 53

Respectfully submitted.

ARCHY McGEHEE,
Commissioner.

Filed May 17th, 1871.

G. T. SWANN, *Clk.*

And afterwards, on the 18th day of May, 1871, the same being another day of said term of the circuit court of the United States for the southern district of Mississippi, held at Jackson on the 1st Monday of May, 1871, the following final decree was rendered by said court in this cause, to wit:

82 Circuit court U. S. south'n dist. Miss., May term, 1871.

HUGH ALLISON & CO., COMPL'TS,
vs.
VAUGHN A. HILBURN. } No. 51.

This cause coming on for final hearing on the bill, answer, exhibits and proof, and the report of the commissioner, Archibald McGehee, appointed by this court to compute and report the am't due by defendant to complainants, it is now ordered and adjudged and decreed, and his honor, the judge, doth hereby order, adjudge and decree, that the report of the commissioners herein be, and the same is hereby, confirmed.

And it is further ordered, adjudged, and decreed, and his honor, the judge, doth further order, adjudge and decree, that the said defendant, Vaughn A. Hilburn, pay to the complainants, within ten (10) days from the date of this decree, the sum of $2,400\frac{53}{100}$, lawful money of the United States, and that the said defendant also pay all costs of this suit. And it is further ordered, adjudged and decreed, and his honor, the judge, doth order, adjudge and decree, that, if the said defendant, Vaughn A. Hilburn, shall fail to pay the amount of money herein decreed

and adjudged to be due and owing to said complainants, Hugh Allison & Co., within the time named in this decree, then and in that case, it is ordered, adjudged and decreed, and his honor, the judge, doth order, adjudge and decree, that the commissioner hereinafter named shall proceed to advertise the land named in the bill of complainants, and described in the mortgage deed, made Exhibit A to the bill of complaint, for the period of four weeks consecutively, in the Jackson Pilot, a newspaper printed and published in the city of Jackson and county of Hinds, and State of Mississippi; and said commissioner shall sell said lands in front of the City Hall, in the city of Jackson, in accordance with the advertisement and this decree, at public sale for cash, to the highest and best bidder therefor, *for cash;* and shall make a deed or deeds to the purchaser or purchasers thereof, and shall put said purchaser or purchasers in possession of the same. And it is further ordered, adjudged, and decreed, that out of the proceeds of said sale, the commissioner hereinafter named shall first pay the costs and expenses of said sale and costs of court, and shall then pay to the complainants, Hugh Allison & Co., the amount of money herein and hereby decreed to be due and owing to them; and the residue arising from sale of said land, if any there be, shall be paid to the said defendant, Vaughn A. Hilburn. And it is further ordered, adjudged and decreed, and his honor, the judge, doth order and adjudge that Archibald McGehee be, and he is hereby, appointed a commissioner of this court, to execute and carry into effect this decree, and report his action in the premises to this court.

Ordered, adjudged, and decreed this the 18th day of May, A. D. 1871.

R. A. HILL.

And on the 23rd day of May, 1871, the followjng sworn petition of V. A. Hilburn was filed in this cause in said court, to wit:

In the district court U. S., southern district of Miss'i.

HUGH ALLISON & CO.
vs.
V. A. HILBURN.

V. A. HILBURN, being duly sworn, on his oath states that he caused the deposition of D. W. McRae to be taken in this cause in his behalf, to sustain his answer. That, by agreement with his counsel at Jackson, the depositions were to be taken by counsel employed at Hazlehurst, and forwarded to the clerk of this court. Affiant further states that he supposed that the important deposition of D. W. McRae, which he understood was taken, had been forwarded to the clerk of this court, and so confident was he of this fact that he did not make inquiry touching it; that he was wholly taken by surprise on learning, after the cause was decided, that the deposition of said McRae was not on file and had not been read. Affiant refers to his answer in this cause, and to the affidavit of said McRae, which is filed with this statement of affiant, to show the materiality of the testimony. Affiant states positively that he believed that his counsel had forwarded the deposition, and that it would be read in evidence at the hearing, it being the duty of his counsel at Hazlehurst to forward it; that counsel states that his impression is distinct that the deposition was taken and forwarded, either by mail or by Mr. S. D. Ramsey, one of counsel for complainants; that counsel has, since this trial, stated that he

does not recollect how the deposition was forwarded, but supposed it was on file in this court.

Petitioner and affiant prays that the court will grant him a rehearing in this cause, to enable him to retake the deposition of said D. W. McRae.

V. A. HILBURN.

Sworn to and subscribed before me, this 23rd May, 1871.

A. McGEHEE, *U. S. Com'r.*

Filed May 23rd, 1871.

G. T. SWANN, *Clk.*

And on said 23rd day of May, 1871, the following affidavit of D. W. McRae was filed, to wit:

In the United States district court, southern district of Mississippi.

H. ALLISON & Co. }
vs.
V. A. HILBURN. }

D. W. McRAE, being duly sworn, states that, as agent for Hilburn, the defendant, affiant visited complainants, in the city of New
87 Orleans, soon after the letter of defendant, which is filed by complainants and marked Exhibit C, was written, and which refers to the mortgage in question, and admits an indebtedness at that time from defendant to complainants; and, in said interview, complainants admitted that defendant really owed them nothing, but had a small balance in their hands due defendant, and a large sum due defendant's wife, M. E. Hilburn; that, on account of mistake on part of complainants' book-keeper, said balance stood largely in favor of defendant, V. A. Hilburn, and not as in truth it should stand, in favor of Mariah E. Hilburn, who had deposited with complainants a considerable sum in coin, and had shipped to them some cotton. Complainants expressed their intention to make the proper correction. They also distinctly stated and admitted that the mortgage was satisfied, but admitted their willingness that it might, as it had not been actually cancelled, stand open for the purpose of protecting the interests of his son, and a ward of his sister's, with whose means defendant had purchased the lands
88 mortgaged. With all of which facts complainants professed to be fully acquainted, and to protect which complainants appeared anxious and willing, and that for that purpose defendant's accounts might stand on the books of complainants as unsettled.

At the time affiant's deposition was taken he saw at Hazlehurst, among the papers in the hands of W. W. Miller, before whom his evidence was taken, three letters from complainants to defendant, and which letters formed a part of his depo'tion.

One of these letters contained a promise to keep the mortgage open for the purpose of Hilburn, with which complainants appeared to be fully apprised, (the lands having been purchased with proceeds of right belonging to his minor son, and the ward of his sister, Mrs. Kyle,) and Hilburn being threatened at the time with a heavy suit for damages, his purpose, as stated in the letter of Allison, being to protect the land by means of the mortgage for the said minors.

Another of these letters contained a proposition that Hilburn

89 should purchase cotton for complainants, and draw on them for such money and supplies as might be necessary to pay for such purchases; believes this letter was dated in fall of 1866, and referred to the crop of that year.

The letter referred to as Exhibit C, by complainants, was written by defendant by dictation of affiants, as a means of giving color to the mortgage, for the purpose before stated, which both parties, complainants and defendant, as well as affiant, if honestly entertained, believed to be perfectly right, to defend the interest of innocent minors.

The account opened in 1866, affiant understood from both parties to have no reference to, or connection in fact, with the mortgage, and was not based upon it. Affiant remembers having an interview with complainants and defendant, in fall of 1866, in reference to defendant's running or working the Tallahala plantation for 1867, and to receive supplies for such a purpose from complainants. That complainants refused decidedly to advance supplies, still ignoring the mortgage, unless defendant would secure them, complainants.

90 Does not know or remember what part of the contemplated profits to arise from the purchase of cotton as referred to, defendant was to have.

These facts are, as affiant recollects, the same substantially, as testified by him in his deposition taken in this cause in Hazlehurst. Affiant does not know what became of the said deposition and letters, except that they were in the hands of the commissioner when taken and completed.

D. W. McRAE.

Sworn to and subscribed before me this 23rd May, 1871.

A. McGEHEE,
U. S. Comm'r.

Filed May 23rd, 1871.

G. T. SWANN, *Clk.*

And on the 24th day of May, 1871, another day of the May term, 1871, of said court, the following order was made in this cause by said court, to wit;

HUGH ALLISON & Co. *vs.* VAUGHN A. HILBURN. } N. S. 51. In equity.

This day came on to be heard the petition of defendant herein for rehearing, and said petition having been argued and submitted, it is ordered by the court that the same be dismissed.

91 On the 5th day of August, 1871, the following report of Archy McGehee, commissioner, was filed in this cause in said court, to wit:

Circuit court of the United States, southern district of Mississippi.

IN THE MATTER OF HUGH ALLISON & Co. *vs.* VAUGHN A. HILBURN. } N. S. 51. Ch'y.

The undersigned, appointed a special commissioner to sell certain

lands embraced and described in the final decree rendered in this cause on the 18 day of May, 1871, would respectfully represent that, after giving the notice required, a copy of which is hereto attached, he did, on the 31st day of July, 1871, in front of the city hall in the city of Jackson, State of Mississippi, expose to public sale the lands aforesaid, and at such sale Hugh Allison, of the city of New Orleans and State of Louisiana, became the highest, last, and best bidder for said lands at and for the sum of seven hundred dollars; whereupon said lands
92 were struck off to the said Hugh Allison, and he declared the purchaser thereof. With this report is filed the deed of commissioner to said Allison.

All of which is respectfully submitted.

ARCHY McGEHEE,
Sp'l Comm'r.

Copy of advertisement.

COMMISSIONER'S SALE.

In the circuit court of the United States for the southern district of Mississippi.

HUGH ALLISON & Co.
vs. } In equity.
VAUGHN A. HILBURN.

Pursuant to a decree rendered in the said cause in the circuit court of the United States for the southern district of Mississippi, at the May term thereof, on the 18 day of May, 1871, the undersigned will, as commissioner, on Monday, the 31st day of July, 1871, within the hours prescribed by law, sell for cash, to the highest and best bidder, the following-described lands, situated in the county of Hinds and State of Mississippi, to wit, the southwest quarter of section twenty-
93 five; the east half of the southeast quarter, and the east half of the west half of the southeast quarter of section twenty-six; the northeast quarter of section thirty-five; the northwest quarter and the west half of the northeast quarter and twenty acres on the north end of the west half of the southwest quarter of section thirty-six, in township three of range four west, containing by estimation seven hundred acres, more or less. I will convey to the purchaser such title as is vested in me by said decree.

ARCHY McGEHEE,
Commissioner.

Filed Aug. 5, 1871.

G. T. SWANN, *Clk.*

And on the 1st day of September, 1871, the following motion was entered herein, to wit:

HUGH ALLISON & Co.
vs. } N. S. 51. In equity.
VAUGHN A. HILBURN.

Complainants move the court to confirm the report and sale of Archy McGehee, commissioner herein, and leave to withdraw the deed to Hugh Allison.

C. E. HOOKER, *for Mo.*

Ent'd Sept. 1st, 1871.

G. T. SWANN, *C'lk.*

94 And on said 1st day of September, 1871, the same being a day in the July special term, 1871, of said circuit court of the United States, the following order was made in this cause by said court and entered upon the minutes thereof, to wit:

HUGH ALLISON & Co., *vs.* VAUGHN A. HILBURN. } N. S. 51. In equity.

Ordered that the report and sale of Archy McGehee, commissioner herein, be confirmed, and that the purchaser, Hugh Allison, have leave to withdraw deed, this 1st Sept., 1871.

And on the 1st day of December, 1871, the following receipts for deed was filed, to wit:

In circuit court, U. S., in equity.

HUGH ALLISON & Co. *vs.* VAUGHN A. HILBURN. } N. S. 51.

Rec'd of Geo. Swann, clerk, &c., pursuant to order of court herein made, Sept. 1st 1871, the deed of Archy McGehee, com'r to Hugh Allison for lands sold in this cause.

C. E. HOOKER;
Att'y for Hugh Allison.

DEC'R 1ST, 1871.

95 And on the 9th day of Jan'y, 1872, the following petition for writ of assistance with the order thereon, was filed in this cause in said court, to wit:

Circuit court of the United States for south'n dist. of Miss'i.

HUGH ALLISON & Co., COMPL'T'S, *vs.* V. A. HILBURN, DEF'T. } N. S. 51. In chancery.

To the Hon. R. A. Hill judge of the circuit court of the United States for the southern district of Mississippi:

The petition of Hugh Allison & Co. respectfully represents and shows to your honor, that as complainants in the above-state' case, pending on the chancery side of the court, they, at the November term of your hon. court, in the year 1871, obtained a final decree against the defendant, V. A. Hilburn, subjecting the lands involved in said suit to sale, in satisfaction of their claim against said defendant; that Archie McGehey was appointed special commissioner to execute said decree; and that in strict compliance with the terms of said decree, he did proceed to advertise said lands for sale, in satisfaction of your petitioners' claim, and on the day of 1871, in front of the United
96 States court-room, at the city-hall, in the city of Jackson, he did proceed, in accordance with the terms of said decree, to sell at public outcry to the highest & best bidder, for cash, the lands in said decree and bill of complaint named, and that Hugh Allison became the purchaser of the same; that he executed his deed as such commissioner,

to the said Hugh Allison to said lands, and reported his action in the premises to your honorable court, and that on the day of 1871, his acts and doings in the premises, were in all things confirmed by your honorable court, and the deed to said purchaser was delivered to the said purchaser, and the commissioner authorized by the terms of said deed to place the said purchaser in possession of the lands so sold.

Your petitioner further shows to your honor that one J. C. Terrell and H. Terrell were found in possession of said lands, as renters and holders, under the said V. A. Hilburn, and utterly and wholly refused to surrender possession of said land to the commissioner, or to the agent and att'y of the purchaser, Hugh Allison, as they were in duty bound to do under the terms of said decree

97 Wherefore your petitioners pray your honor to grant the court's writs of assistance addressed to the marshal of the southern district of Mississippi, commanding him to place the said Hugh Allison, or his ag't or att'y in peaceable and quiet possession of the lands in said bill of complaint and decree and deed of said commissioner named, and, as in duty bound, your petitioners will ever pray, &c.

HUGH ALLISON & CO.

C. E. HOOKER,
Solicitor for Comp'l't.

To the clerk of said court:

You will issue the writ of assistance as prayed for in the within petition. This Jan. 3rd, 1872.

R. A. HILL, *Judge.*

Filed, and writ iss'd Jan'y 9, 1872.

GEO. T. SWANN, *Clk.*

And on said 9th day of Jan'y, 1872, a writ of assistance was issued herein, which, with the returns thereon, is as follows, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States to the marshal of said district, greeting:

98 Whereas, by virtue of a decree of the circuit court of the United States for the southern district of Mississippi, rendered on the 18th day of May, A. D. 1871, in a certain suit in equity pending in said court, wherein Hugh Allison & Co. were complainants, and Vaughn A. Hilburn defendant, Archy McGehee, a commissioner appointed to execute said decree, on the 31st day of July, A. D. 1871, sold to Hugh Allison, one of the said complainants, pursuant thereto, the following described lands, situated in the county of Hinds and State of Mississippi, to wit: the southwest quarter of section twenty-five; the east half of the southeast quarter and the east half of the west half of the southeast quarter of section twenty-six; the northeast quarter of section thirty-five; the northwest quarter and the west half of the northeast quarter, and twenty acres on the north end of the west half of the southwest quarter of section thirty-six, in township three, of range four west, containing by estimation, seven hundred acres, more or less, and executed to the said Hugh Allison a deed of conveyance thereof;

99 and whereas, on the 1st day of September, A. D. 1871, by the order of said circuit court the said report and sale were con-

firmed as by the record thereof appears; and whereas it appears by the petition of said complainants filed in said cause, *it appears* that one J. C. Terrell and H. Terrell have wholly refused to surrender to the said Hugh Allison possession of said lands according to said decree: Therefore, we command you without delay, that you go to and enter upon the said described lands, and that you eject and remove therefrom the said J. C. Terrell and H. Terrell, and all and every person or persons holding and detaining the same, or any part thereof, from the said Hugh Allison, or his assigns, in the full, quiet, and peaceable possession of said lands, without delay; and that him, the said Hugh Allison, in such possession thereof, from time to time, you do maintain, keep, and defend, or cause to be kept, maintained, and defended, according to the tenor and true intent of the said decree of our said court.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Jack-
100 son, in said district, this 9th day of January, A. D. 1872.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

U. S. MARSHAL'S OFFICE,
Jackson, Miss., January 13th, 1872.

I hereby nominate and appoint O. A. Esquirol my special deputy to execute and return the within process according to law.

Witness my hand and seal this 13th day of January, 1872.

M. SHAUGHNESSEY, [SEAL.]
Marshal Southern District of Mississippi.

Returned not executed by request of attorneys. Two trips made with this writ at request of Col. C. E. Hooker, att'y.

M. SHAUGHNESSEY,
U. S. Marshal.
A. O. ESQUIROL,
Dep'ty U. S. M.

Ret'd to cl'k's office Octo. 26, '72, by marshal.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 14th day of November, 1872, the
101 same being a day in the regular November term, A. D. 1872, of said circuit court of the United States for the southern district of Mississippi, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

HUGH ALLISON & CO.
vs.
VAUGHN A. HILBURN.

In this cause it is ordered that the writ of assistance heretofore granted be revoked, and it is now decreed that J. C. Terrell and H. Terrell be made defendants to the same; and they are directed to show cause, on or before the third Friday of this term, why said writ of assistance should not issue on said petition, decreed this November 14, 1872.

And on the 22d day of November, 1872, the following answer of J. C. Terrell and H. Terrell, was filed in this cause in said court, to wit:

Circuit court of the United States southern district of Mississippi.

HUGH ALLISON & AL., vs. V. A. HILBURN. } No. 51.

The answer of H. Terrell and J. C. Terrell to the petition of
102 Hugh Allison & al. for writ of assistance herein.

Respondents answering, say that the defendant, H. Terrell, purchased of one Elizabeth Kyle, the tract of land in controversy in this cause; said purchase was made by him on the 3rd day of May, 1871. They file, as Exhibits No. 1 to this answer, the deed executed by the said Elizabeth Kyle to H. Terrell. For this land the said H. Terrell paid $3,000 in cash as hereinafter explained; and he executed to her his promissory note for $3,000, which is now past due.

Further answering, respondents say that, on the 9th day of April, 1867, the said V. A. Hilburn made a sale of said lands to the said Eliza Kyle, and placed her in possession of the same. Respondents say that said sale to Mrs. Eliza Kyle, was made prior to April 13th, 1868, the time when complainants filed their bill. They file said as Exhibit No. 2 to this. Respondents further say that, after their purchase from Mrs. Eliza Kyle, an undivided half interest in said lands was sold, and to protect themselves respondents have paid $600.00 for the title
103 acquired at said sale; this amount has been allowed them as a credit on the first payment of $3,000.

Respondents state that, at the time of the purchase from Mrs. Kyle, they were informed by her that there was no encumbrance on the property, and so they made the purchase in good faith and for a valuable consideration.

Respondents submit that the said Mrs. Kyle was a necessary party to said suit, as a defendant thereto, and had an equitable right to be heard as a defendant to said claim of said Allison & Co., and in the event the same is valid would be allowed to redeem and pay off said encumbrance.

Respondents submit that a decree so taken is void as to said Mrs. Kyle, and to them as purchasers under her; and that complainants are not entitled in equity to said writ of assistance as herein prayed.

Respondents, further answering, say that, since his purchase, the said H. Terrell has sold your respondent, J. C. Terrell, an interest in said land.

Respondents expressly deny that they are renters or holders of
104 said V. A. Hilburn, as charged in said petition; but, on the contrary, they state and charge that they purchased said land for full value from a person in possession, and claiming, and owning said land. And now, having fully answered, they pray that they may be hence dismissed, &c., with their proper charges, &c.

NUGENT AND YERGER, *Sol's.*

This day the within-named H. Terrell and J. C. Terrell personally appeared before me, and made oath that the statements made in the foregoing answer are true in substance and in fact.

H. TERRELL.
J. C. TERRELL.

Sworn to and subscribed before me this 21 day of Nov., 1872.

A. McGEHEE,
U. S. Comm'r.

Filed Nov. 22d, 1872.

G. T. SWANN, *Clk.*

Exhibit No. 1 *to answer of Terrells.*

Know all men by these presents that Eliza Kyle, for and in consideration of one dollar, to me in hand paid by Hilton Terrell, have released and quit-claimed, and by these presents doth release and quit-
105 claim*ed* unto him, the said H. Terrell, all my right, title, interest, and claim in or to the following described land now in the possession of him, the said H. Terrell, to wit: The southwest ¼ section 25; E. ½ of S. E. ¼ and E. ½ of W. ½ of S. E. ¼ section 26; and N. E. ¼ section 35, and N. W. ¼ and W. ½ of N. E. ¼ of section 36, all in township 3, range 4 west; situated in the county of Hinds. This quit-claim deed is not to effect my vendor's lien for the balance of the purchase-money yet unpaid for the said lands sold heretofore to said Hilton Terrell.

Witness my hand and seal this the 2d day Feb., A. D. 1871.

ELIZA KYLE. [SEAL.]

THE STATE OF MISSISSIPPI,
Copiah County:

Personally appeared before the undersigned, justice of the peace in and for said county, the above-named Eliza Kyle, and acknowledged that she signed, sealed, and delivered the above quit-claim deed, on the day of the date thereof as her act and deed.

Given under my hand & seal this the 2d day of Feb A. D. 1871.

V. A. HILBURN, *J. P.* [SEAL.]

[Stamps cancelled.]

106 THE STATE OF MISSISSIPPI,
Hinds County:

I, George Donnell, clerk of the chancery court of said county, do hereby certify that the foregoing annexed deed was filed in my office for record on the 3rd day of May, 1871, duly stamped, and that the same, with the certificate of acknowledgment, was this day duly recorded in book of deeds No. 35, page 54, &c.

Witness my hand and seal of said court at office in Raymond, this 29 day of May, 1871.

GEO. DONNELL, *Clerk.*

Filed Nov. 22d, 1872.

G. T. SWANN, *Clk.*

Exhibit No. 2 *to answer of Terrells.*

[Int. rev. stamps.]

This deed of conveyance, made and entered into on this ninth day of April, A. D. 1867, witnesseth, that V. A. Hilburn, for and in consideration of the sum of twenty-seven hundred and eighty dollars to him in hand paid by Eliza Kyle, a portion of which payment includes the liquidation of the debt sued for by said Eliza Kyle, No. 247, issue'
107 Copiah Co. circuit court, April term, 1867, hath granted, bargained,

and sold, and by these presents doth grant, bargain, and sell to the said Eliza Kyle, all that tract or parcel of land lying and being in the county of Hinds, and State of Mississippi, to wit: N. E. ¼ sec. 35; N. W. ¼ and W½ N. E. ¼ and all W. ½ S. W. ¼ lying N. of White Oak Creek, sec. 36; and S. W. ¼ except one acre including graveyard, sec. 35, and E. ½ S. E. ¼, and E. ½ of W. ½ of S. E. ¼ sec. 26, all in townsh. 3, R. 4 west, to have and to hold to the said Eliza Kyle, her heirs and assigns forever.

Signed, sealed, and delivered on the day of the date herein written.

V. A. HILBURN.

THE STATE OF MISSISSIPPI,
Copiah County, ss:

Personally appeared before the undersigned, mayor of the town of Hazlehurst, and ex-officio justice of the peace, the above-named V. A. Hilburn, who acknowledged that he signed, sealed, and delivered the above deed of conveyance on the day of the date therein written, and for the purposes therein stated.

Given under my hand and seal this the 11th day of April, 1867.

H. HANSLOW, [SEAL.]
Mayor & ex-off. J. P.

108 THE STATE OF MISSISSIPPI
Hinds County:

I, W'm T. Ratliff, clerk of the probate court of said county, do hereby certify that the foregoing and annexed deed was filed in my office for record on the 15th day of October, 1868, duly stamped, and that the same, with the certificate of acknowledgment was this day duly recorded in book of deeds No. 31, page 566 & '67.

Witness my hand and seal of said court at office at Raymond, this 22 day of Oct., A. D. 1868.

W. T. RATLIFF, *Clerk.*

Filed Nov. 22, '72

G. T. SWANN, *Cl'k.*

And on the 12th day of February, 1873, the following motion for alias writ of assistance, &c., was filed & entered herein, to wit:

HUGH ALLISON & Co.
vs.
V. A. HILBURN. } N. S. 51. In equity.

Hugh Allison, the purchaser under the final decree herein moves the court for an alias writ of assistance, and to dismiss the answer of Terrells in this cause, and to dismiss the proceedings filed by H. and J. Terrell in nature of an answer to petition for writ of assistance.

C. E. HOOKER,
Sol. for Compl't.

109 And afterwards, to wit, on the 20th day of February, 1873, a day of the special term of said court, begun and held at Jackson, in said district, on the 4th Monday and 27th day of January, 1873, pursuant to an order of said court previously made, the following decree was rendered in this cause by said court, to wit:

HUGH ALLISON & Co.
vs.
V. A. HILBURN. } N. S. 51. In equity.

It is ordered, adjudged, and decreed, and his honor the judge doth

order, adjudge, and decree, that the answer of H. Terrell and J. C. Terrell, filed on 22d Nov., 1872, to the order of the judge granting a writ of assistance herein on the 3rd of Jan'y A. D. 1872, be and the same is dismissed, and his honor the judge doth order, adjudge, and decree that an alias writ of assistance herein be issued to the marshal of this court, ordering and directing that he place Hugh Allison, his agent or attorney, the purchaser of said land under original decree of this court, which said sale and purchase is confirmed by final decree of this court,
110 in possession of the land in decree and deed of commissioner named; from which decree of the court the defendant prays an appeal to the next term of the Supreme Court of the United States, to operate as a supersedeas upon said defendant Hilburn entering into bond with two or more good and sufficient sureties in the sum of three thousand dollars, payable to said complainants, Hugh Allison & Co., and conditioned for the payment of such sum as may be decreed against them. It is further ordered by the court that J. C. Terrell and H. Terrell pay the costs of this proceeding so far as the same relates to the suspension of the writ of assistance.

R. A. HILL, *Judge.*

To which judgment and decree of said court the said defendants excepted and filed their bill of exceptions, which was then and there allowed and signed and sealed, and ordered to be made part of the record herein.

111 *Exceptions.*

In the circuit court of the United States for the southern district of Mississippi.

HUGH ALLISON & Co.
vs. } 51. In equity.
VAUGHN A. HILBURN.

On the application of the complainants, Hugh Allison, for a writ of assistance against J. C. Terrell and H. Terrell.

Be it remembered that this matter came on for final hearing, and the petition of said Allison was read, in the words and figures following: (For said petition see pages 95, 96, and 97 of this transcript.) And thereupon the answer of the said J. C. Terrell and H. Terrell, with exhibits thereto, and the record in the case above mentioned, were read in the words and figures following. (For said answer of said J. C. Terrell and H. Terrell, and exhibits thereto, see pages 101, 102, 103, 104, 105, 106, 107, and 108 of this transcript; and for the said record of this cause referred to see pages 1 to 94, inclusive, of this transcript.)

This was all the evidence adduced, and thereupon the said matter was submitted to the court, and a decree therein entered
112 in the words and figures following. (See pages 109 and 110 of this transcript for said decree.) To which judgment of the court the defendants excepted, and their exception was allowed, and an appeal prayed and granted to the next term of the Supreme Court of the United States.

R. A. HILL, *Judge.* [SEAL.]

Filed Feb'y 20th, 1873.

GEO. T. SWANN, *Clk.*

And on the 3rd day of April, 1873, the following appeal-bond was filed herein, to wit:

Know all men by these presence that we, J. C. Terrell and H. Terrell, as principal, and David Hartzog and Thomas Price as sureties, are held and firmly bound unto Hugh Allison & Co. in the sum of three thousand dollars, to be paid to the said Hugh Allison, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents, sealed
113 with our seals, and dated, &c., this March 31, 1873.

Whereas the above-named J. C. Terrell and H. Terrell hath obtained an appeal to the Supreme Court of the United States to reverse a judgment rendered in the circuit court of the United States for the southern district of Mississippi, *to reverse a judgement rendered in the above-entitled court* against the said J. C. Terrell and H. Terrell, in a cause in said court wherein Hugh Allison & Co. *was* complainant and V. A. Hilburn & al. defendants:

Now, the condition of this obligation is this, that if the *the* above-named J. C. Terrell and H. Terrell shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation to be null and void; otherwise the same shall remain in full force and effect.

J. C. TERRELL. [SEAL.]
H. TERRELL. [SEAL.]
D. J. HARTZOG. [SEAL.]
T. W. PRICE. [SEAL.]

UNITED STATES OF AMERICA,
State of Mississippi, Southern District:

Be it remembered that on this day the within-named David
114 Hartzog personally appeared before me and made oath that he is possessed of real estate, subject to execution at law, situated in the aforesaid district, in value worth more than the sum of three thousand dollars over and above all of his just debts, legal liabilities, and exempt property.

D. J. HARTZOG.

Sworn to and subscribed before me this 3d day of April, 1873, by D. J. Hattzog.

GEO. T. SWANN, *Clk.*

UNITED STATES OF AMERICA,
South. Dist. State of Mississippi,
City of Vicksburg:

Before me, Lazarus Lindsey, commissioner for the U. S. circuit court for said dist. and State, residing in said city, this day personally came and appeared Thomas Price, one of the sureties in the annexed bond, and made oath that he is possessed of personal property subject to execution at law, and situated in the aforesaid district, in value worth more than the sum of three thousand dollars, over and above all his just debts, legal liabilities, and exempt property.

T. W. PRICE.

115 Sworn to and subscribed before me this 2nd day of April, 1873.
Witness my hand and official seal.

[L. S.] LAZ. LINDSEY,
Commissioner for U. S. Cir. Court.

Filed and approved April 3, 1873.

GEO. T. SWANN, *Clk.*

116 UNITED STATES OF AMERICA:

Circuit court, so. dis. Mississippi.

HUGH ALLISON & Co. } vs. } 51.
VAUGHAN A. HILBURN.

On the application of the complainant and purchaser, Hugh Allison, for a writ of assistance against H. Terrell and J. C. Terrell.

I, R. A. Hill, presiding judge of the said court, do hereby certify that the decree rendered in the above-entitled cause on the 20th day of February, A. D. 1873, was a decree rendered on the application of the complainant and purchaser, Hugh Allison, for a writ of assistance against H. Terrell and J. C. Terrell; and that the said H. Terrell and J. C. Terrell were the parties who appealed in fact from said decree, and were the parties to whom was granted an appeal and who were directed to execute bond, &c., but that, by clerical misprision on the part of the solicitor for said Hugh Allison, the words "defendant prays" and "upon said defendant Hilburn entering into bond" were inserted in s'd decree in lieu of the words "defendants pray" and "upon the said defendants H. Terrell and J. C. Terrell entering into bond," &c., all of which facts appear from the bill of exceptions filed.

In witness whereof I hereto set my hand this 31st day of May, A. D. 1873.

[SEAL.] R. A. HILL,
Judge, &c.

117 Circuit court of the United States for the southern district of Mississippi.

I, George T. Swann, clerk of said court, do hereby certify that the preceding one hundred and fourteen pages and part of page one hundred and fifteen contain a full, true, and correct transcript of the record of said court in the cause herein lately pending in chancery, wherein Hugh Allison & Co. were complainants and Vaughn A. Hilburn was defendant, No. 51, new series, and wherein J. C. Terrell and H. Terrell were made parties defendants to a petition for a writ of assistance, together with a true copy of the appeal bond therein as the same remains in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at office at Jackson, in said State and district, this 2nd day of May, A. D. 1873.

[SEAL.] GEO. T. SWANN,
Clerk Circuit Court U. S. for South. Dist. Miss.

MAY 6, 1873.—Twenty-four $\frac{30}{100}$. Transcript fee rec'd of appellant, by J. R. Yerger, esq.

GEO. T. SWANN, *Clk.*

118 *Assignment of error.*

Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-three.

HUGH ALLISON & Co. } vs. } 51.
VAUGHAN A. HILBURN.

On petition of Hugh Allison for a writ of assistance against H. Terrell and J. C. Terrell.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at

the Capitol, in the city of Washington, came the said H. Terrell and J. C. Terrell, by their attorney, and say, that in the record and proceedings aforesaid there is manifest error in this, to wit: The *the* court erred in dismissing the answer of the appellant to the petition filed herein by Hugh Allison, and in ordering a writ of assistance to be issued against the appellant as prayed by said Allison. And the said H. Terrell and J. C. Terrell pray that the judgment and decree aforesaid may be reversed, annulled, and altogether held for naught; and that they may be restored to all things which they have lost by occasion of the said judgment.

H. TERRELL AND
J. C. TERRELL,
By NUGENT & YERGER,
Atto'ys.

119 UNITED STATES OF AMERICA, *ss:*

To HUGH ALLISON, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal taken by H. Terrell and J. C. Terrell from a decree of the circuit court of the United States for the southern district of Mississippi, in equity, in a certain cause therein pending, wherein Hugh Allison & Co. were complainants and Vaughan A. Hilburn was defendant, on a petition of Hugh Allison for a writ of assistance against the said H. Terrell and J. C. Terrell, dismissing the answer of the said H. and J. C. Terrell, and directing the writ of assistance to be issued, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. N. Clifford, associate justice and acting Chief Justice of the said Supreme Court of the United States, this 16th day of June, A. D. 1873.

R. A. HILL,
Presiding Judge of the Circuit Court of the United States for So. Dis. Mississippi.

Service acknowledged June 17, 1873.

C. E. HOOKER,
Atto. & Sol. for Hugh Allison.

(Indorsed:) Hugh Allison & Co. vs. Vaughan A. Hilburn. Citation on appeal.

120 UNITED STATES OF AMERICA,
State of Mississippi:

Personally appeared before me, Geo. T. Swann, clerk of the circuit court of the United States for the southern district of Mississippi, W. L. Nugent, solicitor for appellants in the above-entitled cause, who, being sworn, says that on the 17th day of June, A. D. 1873, he executed upon C. E. Hooker, esq., the citation in appeal found attached to the foregoing page of this record; and that the said Hooker was at that time & still is, att'y & solicitor for the appellee, Hugh Allison.

W. L. NUGENT,
Sol'r for Appellant.

Sworn to & subscribed before me this day of July, A. D. 1873.

(Indorsement on cover:) No. 224. J. C. Terrell and H. Terrell, appellants, vs. Hugh Allison. S. Mississippi C. C. U. S. Filed 11th October, 1873.

Supreme Court of the United States.

J. C. TERRELL, ET AL.,
v.
HUGH ALLISON.
No. 224.

Brief of P. PHILLIPS,

For Appellants.

On 13 April, 1868, Allison filed his bill to foreclose a mortgage executed by Hilburn on 17 April, 1866. Hilburn alone was made defendant.

The answer of Hilburn denies all indebtedness to the complainant, and sets forth facts attacking the validity of the mortgage.

It specifically avers, that though the title to the land was nominally in him, it was in truth the property of his sister, Mrs. Kyle, and of his son, Thomas Hilburn, who paid for it with their own funds, and that knowledge was communicated to the complainant at the time of the execution of the mortgage. p. 7.

On the hearing a decree was rendered in favor of the complainant for $2,400, and the premises directed to be sold. p. 34.

The report of the sale to Hugh Allison was confirmed on the 1st September, 1871.

It is seen that the answer of Hilburn showed that there was an outstanding equitable title in the premises, in persons who were not parties to the bill, and this is sustained by the deposition of D. W. McRae, Esq., at p. 36.

The complainant however proceeded in the cause against Hilburn alone.

On the 9 January, 1872, Allison filed his petition for a writ of assistance, in which it is averred that J. C. Terrell, and H. Terrell were in possession of the premises and refused to deliver them up.

The writ prayed for was granted, but subsequently, to wit: on the 14 November, 1872, the grant of the writ was revoked, and a rule against the Terrells to show cause why the writ should not be issued, was substituted. p. 41.

The Terrells being thus made parties to the proceedings—

An answer to the rule was filed on the 22 November, 1872, in which it is averred that H. Terrell purchased the premises from Elizabeth Kyle on the 3 May, 1871, for $6,000, of which sum $3,000 was paid in cash, and a note executed for the remainder. The deed of Elizabeth was filed as an exhibit. This purchase it is averred was made in good faith, and without knowledge of any incumbrance.

The nullity of the decree for want of proper parties is insisted on.

The truth of these statements is sworn to by the respondents. p. 42.

The deed of Mrs. Kyle was ackowledged on the day of its execution, and recorded on 3 May, 1871. p. 43.

On the 20 February, 1873, the answer of the Terrells was dismissed, and the writ ordered to be issued. p. 45.

From this decree the appeal is now taken to this court.

ASSIGNMENT OF ERROR.

The dismissal of the answer of the Terrells to the rule to show cause why a writ of assistance should not issue, and the allowance of the writ against them.

The answer of the Terrells was not controverted. No attempt was made to show that any one of the averments was untrue. The bona fides of the conveyances was not attacked.

These conveyances showed a title accompanied by possession in Mrs. Kyle by virtue of a deed executed to her on the 9th of April, 1867—acknowledged on the 11th of April.

It is true that this deed was not recorded until the 15 October, 1868, some months subsequent to the filing of the bill.

The want of registry may have excused the complainant from not making Mrs. Kyle a party when he originally filed his bill. But, when pending the proceeding the knowledge of it was brought to the complainant, there could be no justification in making a decree conclusive of her rights without giving an opportunity for their assertion.

The want of registry does not invalidate the conveyance.

McAnally v. Bingham, 6 How., Miss. 382.

Possession is notice, whether the deed under which it is held is recorded or not.

Jenkins v. Bodley, 1 S. and M. Chan, 338.
Walker v. Gilbert, 7 Do., 456.

The case then shows a decree against Hilburn, the mortgagor—who long before the filing of the bill had conveyed all his interest to Mrs. Kyle.

Robertson v. Carson, 19 Wall., 105.

That Mrs. Kyle, and those claiming under her title were necessary parties to such a bill is familiar doctrine.

Maduras v. Catlett, 7 Monroe, 476.

Carman v. Watson, 1 How., Miss. 333.

After the decree was made, those claiming under Mrs. Kyle's title were allowed to be heard in the assertion of their interest, and when their title was shown, the court, without any evidence attacking it, dismissed their claim, and held them concluded by a decree in a proceeding to which they were not parties.

No reason is assigned for this, and it is difficult to find one.

In the absence of any evidence even tending to show fraud or collusion in the execution of the conveyances, there could be in the nature of things no authority in the court to order the ouster of parties strangers to the record.

In Vanhook v. Throckmortin, Chancellor Walworth held, that a purchaser under a decree of foreclosure was not entitled to the writ, even as against a person who went into possession, *pendente lite*, unless that possession was acquired by permission of one of the parties to the suit.

8 Paige, 33.

This coercive writ can only operate against the mortgagor himself, or possibly his tenant.

Trammell v. Sumons, 8 Ala., 272.

Ringo v Burns, 10 Pet., 281.

Here the parties coerced are those who hold title, and posession *ante litem motam*, and it is submitted that as against them the action of the court in decreeing their ouster cannot be justified.

P. PHILLIPS,
for Appellants.

IN THE

Supreme Court of the United States.

HUGH ALLISON & CO.

vs.

VAUGHAN A. HILBURN.

On Petition for Writ of Assistance against H. & J. C. Terrell.

BRIEF

OF

NUGENT & YERGER,

FOR APPELLANTS.

In the Supreme Court of the United States.

HUGH ALLISON & CO.,
COMPLAINANTS,
vs.
VAUGHAN A. HILBURN,
DEFENDANT.

On petition for Writ of Assistance against H. and J. C. Terrell.

The Record in this cause, though voluminous, presents but a single question for the consideration of the Court. On the 13th day of April A. D. 1868, the complainants filed their bill in the Circuit Court of the United States for the Southern District of Mississippi, to foreclose a mortgage executed in their favor by the defendant Hilburn, on the 17th day of April, A. D. 1866, and conveying the following lands in Hinds county, Mississippi, to wit: The S. W. quarter, Sec. 25, the E. half of S. E. quarter and E. half of W. half of S. E. quarter, Sec. 26, the N. E. quarter Sec. 35, the N. W. quarter and W. half N. E. quaater, and twenty acres in north of W. half, S. W. quarter Sec. 66, township three, range four west.

The final decree, ordering a foreclosure of the mortgage, was entered and enrolled on the 18th day of May, A. D. 1871.

The lands were sold, on the 31st day of July, A. D, 1871, by the Commissioner appointed for that purpose, and *struck off* to Hugh Allison, one of the complainants. The report of sale was confirmed September 1st, 1871. Vaughn A. Hilburn was the only defendant to the Bill, and the *subpœna* to answer was executed upon him April 16, 1868.

On the 9th January, 1872, Hugh Allison, on a petition filed, alleging that J. C. Terrell and H. Terrell were found in possession of the lands sold as above stated, as renters and holders under Hilburn, obtained a writ of assistance to oust them. This writ was returned Oct. 26, 1872, not executed by order of complainant's Solicitor. On the 14th day of November, 1872, this writ was revoked by order of the Court, and H. Terrell and J. C. Terrell were made defendants, and were

directed to show cause, on or before the third Friday of the November Term, 1872, of said Court, why a writ of assistance should not be issued on the petition filed by said Hugh Allison. On the 22d November, 1872, the Terrells filed their answer showing cause, and the answer was dismissed, and an alias writ of assistance ordered to be issued. An appeal was prayed and granted; and the only question for solution is, did the answer show good cause against the issuance of the writ of assistance, and necessitate some other and different proceeding to eject the Terrells.

Neither H. Terrell, nor J. C. Terrell, nor Mrs. Eliza Kyle, were parties to the original Bill, and the following facts appear upon the face of the answer and exhibits therewith filed. On the 9th day of April, 1867, a year before the bill was exhibited in said Court, Hilburn conveyed the mortgaged premises to Mrs. Eliza Kyle, for the consideration of $2,780, and *and put her in possession of the same on that day.* This deed was properly acknowleged but was not recorded until the 22d day of October, 1868, some six months *after* the filing of the Bill. On the 3d day of May, 1871, Mrs. Kyle sold the lands to the Terrells for six thousand dollars, $3,000 cash, and the balance on time. After the purchase from Mrs. Kyle, an undivided half interest in the land was sold, and to protect themselves the Terrells purchased at the sale, expending for that purpose $600, which is credited on their note in favor of Mrs. Kyle for $3,000. The Terrells, as they allege, purchased the lands from Mrs. Kyle, who was in possession, for their full value. It is positively denied that they are renters and holders under Hilburn, and clearly stated that they hold under Mrs. Kyle, who purchased from Hilburn a year before Hugh Allison & Co. commenced their proceedings for a foreclosure of their mortgage. The petition for the writ of assistance *is not sworn to*, the answer *is*—There was no replication filed to the answer, which was dismissed on Allison's motion. It is evident that the Court never would have dismissed an answer to a rule to show cause, if it had not been thought that the answer itself failed to show *any* cause, why the writ should not be issued, in *contemplation of law*; and, therefore, we make no point as to this convenient mode of disposing of the controversy. The real point at issue, without making any quibble, is: Was the answer sufficient, on its face and taken in connection with the exhibits filed therewith? It so appeared to us, and we must confess that we were surprised when when the learned Judge granted the order to dismiss it.

There is no rule more familiar to the Courts and the profession than this, that judgment and decrees, rendered without notice to the parties

to be affected, are absolutely void as to them. This notice is said to be the vital breath that animates judicial jurisdiction over the person. "It is of the essence of a cause. Without it there cannot be parties, and without parties there may be the form of a sentence, but no judgment obligating the person."

In fact such judgments and decrees are treated as nullities and may be attacked collaterally. And it is not in the power of the Legislature, under the Constitution of this State and of the United States, to dispense with notice. Ex Parte Heyfron, 7 How. Miss. 127; Gwinn vs. McCarroll, 1 Smedes & Marshall, 351; 7 Sm. & Mar. 85; 33 Miss. 382; 1 Kent 261, 262, and notes; Cooley's Com. Lim. §§ 402, 353, 369. In this case neither Mrs. Kyle nor the Terrells had notice of the proceeding to foreclose the mortgage, and it would reasonably seem that their rights cannot be interfered with in the summary mode adopted by the Court.

The general rule is, that all persons who have the legal interest in a mortgage, as well as those who have the equitable interest therein, are necessary parties to a bill to foreclose, and that there can be no redemption or foreclosure unless all the persons entitled to the whole mortgage money are before the Court. Where the mortgagee has conveyed his equity of redemption absolutely, the assignee only need be made a party to the bill to foreclose. Story's Equity Pleadings, § 197, 201, 186. In fact Hilburn was neither a necessary nor a proper party in this cause. He had, one year prior to the filing of the bill, sold and conveyed the mortgaged premises to Mrs. Kyle. The Court rendered its decree to *foreclose the equity of redemption* without having any jurisdiction of the same. Evidently the decree foreclosing Hilburn's Equity is void because he had, long prior to the filing of the bill, parted with that very equity. The decree might aptly be termed *coram non judice*. Thus it has been held that the title of the grantee of mortgaged premises is not affected by a foreclosure and sale in a suit commenced after the conveyance by the mortgagor, unless he be made a party to the suit. Bludworth v. Lake, 33 California 355.

And where mortgaged real estate is conveyed to a trustee for the benefit of children in being and to be born, those children *in esse* at the time of the filing of the bill of foreclosure should be made parties; and if they are not joined, they will not lose their right to redeem by the decree of foreclosure, even though the Trustee be a party to the suit. Clarke v. Reyburn, 8 Wall, 318. In this case Mr. Justice Swayne, delivering the opinion of the Supreme Court, said: "The equity of redemption would have been barred and extinguished by the

directed to show cause, on or before the third Friday of the November Term, 1872, of said Court, why a writ of assistance should not be issued on the petition filed by said Hugh Allison. On the 22d November, 1872, the Terrells filed their answer showing cause, and the answer was dismissed, and an alias writ of assistance ordered to be issued. An appeal was prayed and granted; and the only question for solution is, did the answer show good cause against the issuance of the writ of assistance, and necessitate some other and different proceeding to eject the Terrells.

Neither H. Terrell, nor J. C. Terrell, nor Mrs. Eliza Kyle, were parties to the original Bill, and the following facts appear upon the face of the answer and exhibits therewith filed. On the 9th day of April, 1867, a year before the bill was exhibited in said Court, Hilburn conveyed the mortgaged premises to Mrs. Eliza Kyle, for the consideration of $2,780, and *and put her in possession of the same on that day.* This deed was properly acknowleged but was not recorded until the 22d day of October, 1868, some six months *after* the filing of the Bill. On the 3d day of May, 1871, Mrs. Kyle sold the lands to the Terrells for six thousand dollars, $3,000 cash, and the balance on time. After the purchase from Mrs. Kyle, an undivided half interest in the land was sold, and to protect themselves the Terrells purchased at the sale, expending for that purpose $600, which is credited on their note in favor of Mrs. Kyle for $3,000. The Terrells, as they allege, purchased the lands from Mrs. Kyle, who was in possession, for their full value. It is positively denied that they are renters and holders under Hilburn, and clearly stated that they hold under Mrs. Kyle, who purchased from Hilburn a year before Hugh Allison & Co. commenced their proceedings for a foreclosure of their mortgage. The petition for the writ of assistance *is not sworn to*, the answer *is*—There was no replication filed to the answer, which was dismissed on Allison's motion. It is evident that the Court never would have dismissed an answer to a rule to show cause, if it had not been thought that the answer itself failed to show *any* cause, why the writ should not be issued, in *contemplation of law;* and, therefore, we make no point as to this convenient mode of disposing of the controversy. The real point at issue, without making any quibble, is: Was the answer sufficient, on its face and taken in connection with the exhibits filed therewith? It so appeared to us, and we must confess that we were surprised when when the learned Judge granted the order to dismiss it.

There is no rule more familiar to the Courts and the profession than this, that judgment and decrees, rendered without notice to the parties

to be affected, are absolutely void as to them. This notice is said to be the vital breath that animates judicial jurisdiction over the person. "It is of the essence of a cause. Without it there cannot be parties, and without parties there may be the form of a sentence, but no judgment obligating the person."

In fact such judgments and decrees are treated as nullities and may be attacked collaterally. And it is not in the power of the Legislature, under the Constitution of this State and of the United States, to dispense with notice. Ex Parte Heyfron, 7 How. Miss. 127; Gwinn vs. McCarroll, 1 Smedes & Marshall, 351; 7 Sm. & Mar. 85; 33 Miss. 382; 1 Kent 261, 262, and notes; Cooley's Com. Lim. §§ 402, 353, 369. In this case neither Mrs. Kyle nor the Terrells had notice of the proceeding to foreclose the mortgage, and it would reasonably seem that their rights cannot be interfered with in the summary mode adopted by the Court.

The general rule is, that all persons who have the legal interest in a mortgage, as well as those who have the equitable interest therein, are necessary parties to a bill to foreclose, and that there can be no redemption or foreclosure unless all the persons entitled to the whole mortgage money are before the Court. Where the mortgagee has conveyed his equity of redemption absolutely, the assignee only need be made a party to the bill to foreclose. Story's Equity Pleadings, § 197, 201, 186. In fact Hilburn was neither a necessary nor a proper party in this cause. He had, one year prior to the filing of the bill, sold and conveyed the mortgaged premises to Mrs. Kyle. The Court rendered its decree to *foreclose the equity of redemption* without having any jurisdiction of the same. Evidently the decree foreclosing Hilburn's Equity is void because he had, long prior to the filing of the bill, parted with that very equity. The decree might aptly be termed *coram non judice*. Thus it has been held that the title of the grantee of mortgaged premises is not affected by a foreclosure and sale in a suit commenced after the conveyance by the mortgagor, unless he be made a party to the suit. Bludworth v. Lake, 33 California 355.

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decree which ordered the premises to be sold if the proper parties had been before the Court when it was made," and the converse of the proposition is equally true, that where the proper parties are *not* before the Court, the equity of redemption is unaffected.

There can be no doubt that the right of redemption of a junior encumbrancer cannot be cut off by a foreclosure preceeding unless he be made a party to such proceeding. Newcomb v. Dewey, 27 Iowa, 881; Lyne v. Sandford, 5 Conn. 546. When a mortgagor has conveyed his interest in the equity of redemption, the assignee must be made a party to the suit to foreclose. Reed v. Marble, 10 Paige, C. R. 409. And if he is not made a party the decree of foreclosure as to him will be a mere nullity. Cutter v. Jones, 52 Ill., 84. While it may be admitted, as a general proposition, that the purchaser of land, under a decree of foreclosure, is entitled to the assistance of the Court in obtaining possession, still he can only proceed against parties to the suit for foreclosure, or persons who have come into possession *under them subsequently* to the filing of the bill or service of process. And it is only where the party enters upon the possession of mortgaged premises, *pending a suit of foreclosure*, and under a party to the suit, that he can be summarily turned out. Frelinghuysen v. Cowden, 4 Paige, C. R. 204; Van Hook v. Throckmorton, 8 Paige, C. R. 33; Bright v. Pennywit, 21 Arks. 130; 10 Georgia, 508.

These principles of law are so consonant with equity and fair dealing, and so firmly established and universally adopted, that we can only discover one reason why the application for the writ of assistance in this case was allowed; and that is, because the deed from Hilburn to Mrs. Kyle, though executed and delivered on the 9th day of April, 1867, was not recorded until the 22d day of October, 1868. But that was *no* reason when the matter is properly considered. In addition to the introduction of the deed and decree of foreclosure in the case, it was incumbent on the petitioner to show that the Terrels, or their vendor, Mrs. Kyle, came into possession of the mortgaged premises under the mortgagor and *after* the filing of the bill. See cases last cited. If the answer of the Terrells is not considered, the only evidence of these facts was the suggestive petition, which was not verified by any affidavit whatever. And thus the case was narrowed down to this proposition: Could the Court, *as against one not a party to the suit*, award a writ of assistance upon the mere *ipse dixit* or suggestion of counsel? Are rights of person and property thus lightly to be dealt with? Is this the due "course of law" provided for by the Constitution, and so eloquently elucidated by this Court?

It is manifest that in dismissing the answer, the Court considered it as insufficient for the reason alone that the deed from Hilburn to Mrs. Kyle was not rrgistered until after the bill was filed. In doing this the Court erred greatly in the estimate put upon the deed. It was *only void as to subsequent purchasers and mortgagees from Hilburn*, if any such there were; its *validity* did not depend upon its being *registered* and was not at all affected by the failure to place it upon record. It was good between the parties and in respect to *prior* mortgagees. Sessions v. Reynolds, 7 Sm. and Mar., 130; Harper v. Bibb, 34 Miss., 472; McAnnelty v. Bingaman, 6 How., Miss. 482; Rev. Code Miss. 1857, p. 310.

But even if the Complainant could have made a point upon the failure to register, the answer of the Terrells shows that Mrs. Kyle was put into possession by Hilburn when the deed was executed by him, and this in law constitutes notice. Dixon v. Doe, 1 S. M., 70; Halls v. Thompson, Ibid. 443; Wilty v. Hightower, 6 S. & M., 345; Walker v. Gilbert, 7 S. & M., 456; Humphries v. Partee, 10 S. & M., 282; Jones v. Loggins, 37 Miss. 546; Perkins v. Swank, 43 Miss. 349. So that in any point of view, the dismissal of Terrell's answer, and awarding the writ of possession were erroneous. The complainant purchaser should have been required to proceed regularly against the parties for the recovery of possession and not allowed this harsh, summary remedy.

NUGENT & YERGER,
For Appellant.

C. Phillips